

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7066

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ROBERT ST. AMOUR,
Plaintiff — Appellee

JOSEPH STONE,
Intervening Plaintiff —
Appellee

v.

PAUL PHILBROOK, individually
and as Commissioner of
the Vermont Department
of Social Welfare,
Defendant — Appellant



ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF VERMONT

Civil Action No. 73 - 104

JOINT APPENDIX

DEAN B. PINELES
Assistant Attorney General
Office of Attorney General
State Office Building
Montpelier, Vt. 05602
Counsel for Defendant — Appellant

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CIVIL DOCKET
UNITED STATES DISTRICT COURT

MAR 24 1975

Civ. 73-104
 Jury demand date:

COFFRIN

D. C. Form No. 106 Rev.

TITLE OF CASE

ATTORNEYS

Robert St. Amour, and Joseph
 Stone, Intervening Plaintiff
 vs.

Paul Philbrook, individually
 and as Commissioner of Social
 Welfare

For plaintiff: Stephen W. Kimbell, Esq.
~~Matthew I. Katz, Esq.~~
 P.O. Box 562
 Burlington, Vt.

For defendant:
 Attorney General

Dean Pineles, Esq.
 Assistant Attorney General
 Social Welfare Division
 4 East State St.
 Montpelier, VT 05602

| STATISTICAL RECORD | COSTS | DATE | NAME OR RECEIPT NO. | REC. | DISB. |
|-------------------------------|--------------|--------|---------------------|-------|-------|
| J.S. 5 mailed MAY 4 1973 | Clerk | 1973 | | | |
| | | 4-10 | #20955 | 15 00 | |
| | | 4-13 | C.D. #45 | | 15 00 |
| J.S. 6 mailed JAN 9 1975 | Marshal | 1975 | | | |
| | | JAN 22 | #23696 | 5 00 | |
| Basis of Action: Civil Rights | Docket fee | " 24 | # 31 | | 5 00 |
| 42 U.S.C. 1983 | Witness fees | | | | |
| Action arose at: 2 | Depositions | | | | |

| DATE | PROCEEDINGS | Date Order Judgment No |
|---------|---|------------------------|
| 1973 | | |
| Apr. 10 | Filed Complaint. | 1. |
| " " | Issued Summons. | |
| " 12 | Filed Summons returned served. | 2. |
| " " | Filed Memorandum in support of TRO. | 3. |
| " 13 | In Chambers before Judge Coffrin, hearing on application for TRO. Matthew I. Katz, Esq. and Stephen Elias, Esq. for Plaintiff; Ben Scotch, Esq. for Defendant. | |
| " " | Court suggests that parties get together and resolve the immediate problem. | |
| Nov. 7 | Filed Motion to Intervene - Joseph Stone. | 4. |
| " " | Filed Application for Temporary Restraining Order -- Joseph Stone. | 5. |
| " 8 | Issued Order to Show Cause returnable 11-13-73, 4:00 p.m. at Mont. | |
| " 13 | Filed Intervening Plaintiff Stone's Memorandum of Law in Support of TRO. | 6. |
| " " | In Court before Judge Holden, Plaintiff Intervenor present with his attorney Louise McCarran, Esq., and Dean Pineless, Esq. and David Kalib, Esq. present for Defendants. | |
| " " | Court inquires if defendants have any objections to motion to intervene by Joseph Stone as Plaintiff Intervenor. | |
| " " | Mr. Pineless states defendant has no objections to motion to intervene. | |
| " " | ORDERED: Motion of Joseph Stone to Intervene grant 1. | |
| " " | Hearing on Motion of Plaintiff Stone for Temporary Restraining Order. | |
| " " | Joseph Stone sworn by Clerk, was examined by Mrs. McCarran for Plaintiff Stone. | |
| " " | Court informs counsel to prepare TRO, and benefits to continue until hearing is held in case on merits. | |
| " " | Filed Intervenor's Complaint. | 7. |
| " 16 | Filed Show Cause Order returned served. | 8. |
| Dec. 4 | " Temporary Restraining Order. Mailed copy to attys. | 9. |
| 1974 | | |
| Feb. 26 | " Pltfs' Motion for Summary Judgment. | 10. |
| " " | " Memorandum of Law in support of Pltf's Motion for Summary Judgment. | 11. |
| " " | " Pltfs' Request for Admission. | 12. |
| " 4 | Filed Stipulation of Dismissal as to original named Plaintiff. | 13. |
| " 5 | " Order of Dismissal re original named Pltf. only. Copy mailed to attys. | 14. |
| Mar. 8 | Filed Defendant's Answer. | 15. |
| Apr. 17 | Filed Defendant's Memorandum in opposition to Plaintiff's Motion For Summary Judgment. | 16. |
| May 1 | " Affidavit of William E. Griffin. | 17. |
| " 2 | In Chambers before Judge Coffrin, hearing on plaintiffs' motion for summary judgment. Stephen W. Kimbell, Esq. for plaintiffs; Dean Pineless, Esq. for defendant. | |
| " " | Statements made to Court by Mr. Kimbell and by Mr. Pineless. | |
| " " | Mr. Pineless moves for summary judgment as to issue of law. | |
| " " | Ordered: Motion granted. | |
| " " | Further statements made by Mr. Kimbell and by Mr. Pineless. | |
| " " | Taken under advisement. | |
| " 13 | Filed Order -- parties required within 20 days to file stipulation concerning facts, if parties cannot agree case will be scheduled for hearing. Copy mailed to attys. | 18. |
| June 4 | Filed Stipulation. | 19. |
| June 28 | " Pltf's Motion for Class Action Determination. | 20. |

| DATE | PROCEEDINGS | Date Order Judgment No. |
|----------|---|-------------------------|
| 1974 | | |
| July 10 | Filed Pltf Stone's Amended Motion for Class Action Determination. | 21. |
| " " | " Pltf Stone's Memorandum in support of Amended Motion for Class Action Determination. | 22. |
| " 19 | Filed Defendant's Memorandum in opposition to Amended Motion for Class Action Determination. | 23. |
| Sept. 17 | At the Call of the Calendar before Judge Coffrin, it is | |
| " " | ORDERED: case passed. | |
| Oct. 7 | In Chambers before Judge Coffrin, hearing on plaintiff-intervenor Stone's motion and amended motion for class action determination. Stephen W. Kimbell, Esq. for Plaintiff; Dean Pineless, Esq. for Defendant. | |
| " " | Decision reserved. Defendant has 10 days to file memorandum; Plaintiff has additional 10 days to file reply memo. | |
| " " | Filed defendant's motion to dismiss and affidavit. | 24. |
| " 21 | " Deft's Memorandum in support of Motion to Dismiss. | 25. |
| " 31 | Upon consideration of Pltf's request for additional time to submit memorandum, it is | |
| " | Ordered: Motion granted, Pltf may have an additional 5 days to file memorandum. Attorneys notified. | |
| Nov. 5 | Filed Memorandum in Opposition to Defendant's Motion to Dismiss. | 26. |
| Dec. 16 | Filed Opinion and Order--Defendant's motion to dismiss is denied and that the plaintiff's motion for class action certification is granted with respect to those receiving General Assistance three or more times per month. The plaintiff's motion for summary judgment is granted as the Court finds and declares the State's policy of denying evidentiary hearings to regular recipients of General Assistance, as defined in this opinion, to be unconstitutional. | 27. |
| 1975 | | |
| Jan. 14 | " Deft's Notice of Appeal. Mailed copy to Stephen W. Kimbell, Esq., Dean Pineles, Esq., Judge Coffrin, Court Reporters and Clerk, U. S. Court of Appeals for the Second Circuit, N.Y., N. Y. | 28. |
| " 22 | " Deft's Report on The General Assistance Study. | 29. |
| Feb. 5 | Filed Defendant's Motion for Relief from Order dated Dec. 16, 1974. | 30. |
| " " | " Deft's Memorandum in Support of Motion for Relief from Court's Order. | 31. |
| Feb. 18 | Filed plaintiffs' memorandum in opposition to defendant's motion for relief from Order of 12/16/74. | 32. |
| Feb. 18 | In Chambers before Judge Coffrin, hearing on defendant's motion for relief from Order dated 12/16/74. Stephen W. Kimbell, Esq. for Plaintiff; Dean Pineles, Esq. and David Kalib, Esq. for Defendant. | |
| " " | Ordered: Motion denied. | |
| " 20 | Mailed Record on Appeal to Clerk, U. S. Court of Appeals for the Second Circuit, N.Y., N.Y. Attys. notified. | |

COMPLAINT OF ROBERT ST. AMOUR

INTRODUCTION

This is a civil rights class action brought pursuant to 42 U.S.C. 1983, alleging that defendants have interrupted and continue to interrupt the general assistance maintenance grant of plaintiff without first affording him adequate notice and a hearing in which he may contest the factual and judgmental basis for such interruptions. Defendant's failure to afford plaintiff a pre-interruption hearing, it is alleged, violates his rights under the due process clause of the 14th amendment to the United States Constitution.

General Assistance is a state-funded program which is designed a) to provide maintenance grants at a subsistence level to persons who are in need and unable to secure a subsistence from a person legally responsible for their support, and b) to provide emergency, one-time grants to this same class of people for necessities of life, funeral expenses, clothing, and medical care. This lawsuit is concerned solely with terminations of maintenance grants.

JURISDICTION

This Court has jurisdiction of this action pursuant to 28 U.S.C. 1343. Plaintiff's action for declaratory relief is authorized by 28 U.S.C. §§2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure (FRCP), which relate to declaratory judgments.

Plaintiff

Plaintiff Robert St. Amour resides with his wife and three children in Vergennes, Vermont

Defendant

Paul Philbrook is Commissioner of the Vermont State Department of Social Welfare (DSW), and is charged with responsibility for directly administering all public assistance programs of the State of Vermont, including the Vermont General Assistance Program.

FACTUAL ALLEGATIONS

1. Plaintiff resides with his wife and three children in Vergennes, Vermont.
2. Plaintiff and his family have received General Assistance from the Vermont Department of Social Welfare for seven consecutive months.
3. This assistance has been the means of support for this family, and on which it has relied for all basic necessities of life.
4. Plaintiff has received this general assistance weekly for food, in an amount which did not change for the seven months ending March 29, 1973.
5. Plaintiff received this general assistance monthly for rent in the amount of \$88, which figure has been constant until April 5, 1973, when it was lowered to \$80 without any change in the amount of rent paid by Plaintiff. Plaintiff has also had his utilities paid through General Assistance.

6. Plaintiff was trained in barbering through the auspices of the Manpower Development and Training program of the Vermont Department of Employment Security.

7. Plaintiff was able to open a barbershop in Vergennes through a loan from the Small Business Administration; which loan is secured by Plaintiff's barbering fixtures and equipment.

8. Plaintiff opened his barbershop in Vergennes this winter and has averaged between \$175 and \$200 per month gross receipts in the shop. This amount has just covered the rent, utilities, and other operating expenses of the barbershop.

9. Plaintiff believes this barbershop will grow into a business capable of supporting himself and his family if he can continue its operation through the summer months when the tourist trade in Vergennes will pick up.

10. Plaintiff is not capable of engaging in the more rigorous trade of driving a truck which he formerly plied because of a lumbar disc disease which has not proved susceptible to treatment.

11. Plaintiff's General Assistance was interrupted on March 29, 1973, when the District Director of the Middlebury office of the Vermont Department of Social Welfare made the factual and legal determination that the gross receipts generated by Plaintiff's barbershop were income available for the support of Plaintiff's family.

12. Plaintiff believes that in plying the trade of barbering, he will develop the means of support of his family which is the long range purpose of the general assistance program.

13. Plaintiff was not given advance notice of the interruption of benefits, and was not given an opportunity for a prior hearing at which he might contest the interruption of benefits.

14. The interruption of benefits on March 29 has left Plaintiff and his family without the support, maintenance, and necessities of life for which general assistance is provided. This has resulted in the immediate threat of irreparable injury to the family of Plaintiff.

STATEMENT OF CLAIM

In respect to plaintiff, the general assistance program operates as a maintenance program. Currently, Plaintiff and his family rely exclusively on this program to stay alive. Plaintiff's reliance is based on the statutory nature of the program and his knowledge that assuming his eligibility, he is automatically entitled to subsistence maintenance benefits. An interruption in those benefits means instant danger and possible catastrophe. Plaintiff expected to receive his normal benefits on March 29, 1973, because plaintiff believed himself to be still eligible for the benefits. The sudden interruption in the benefits came as a shock and has in fact placed him in immediate danger.

To Plaintiff, such an interruption constitutes a termination notwithstanding a different characterization placed on such action by the defendants. Terminations or suspensions of subsistence welfare benefits without first giving the recipient adequate notice and a meaningful opportunity to be heard on the factual or judgmental bases for the termination or suspension has been held to be a violation of the due process clause of the 14th amendment to the United States Constitution. Goldberg v. Kelly. 397 U.S. 154 (1970). By terminating plaintiff from general assistance maintenance benefits, without first giving him adequate notice and a meaningful opportunity to be heard consistent with the guidelines in Goldberg v. Kelly, defendants have denied him due process of law.

IRREPARABLE INJURY

If the interim relief prayed for by plaintiff is not granted, he will be utterly without the means for subsistence and will suffer great and irreparable injury as is more completely alleged infra.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that this Court:

- A. Assume jurisdiction of this Cause;
- B. Enter a declaratory judgment declaring that the defendant's practice of terminating general assistance grants without affording the recipients thereof adequate notice and a hearing at which they may contest the factual and judgmental

bases of the action denies plaintiff due process of law under the 14th amendment to the United States Constitution.

C. Issue a temporary restraining order, preliminary, and permanent injunction restraining defendant from terminating, interrupting, or suspending the General Assistance maintenance grants of plaintiff unless he is first given proper notice and an opportunity for a hearing at which they may contest the factual and judgmental basis of the termination or suspension action.

D. Grant such other relief as the Court may deem equitable and just.

INTERVENOR'S COMPLAINT

[Much of the Intervenor's complaint is identical to that of Robert St. Amour, and therefore has not been repeated]

Introduction (same)

Jurisdiction (same)

Plaintiff

Plaintiff-Intervenor, Joseph Stone, lives alone in Vergennes, Vermont. He is a fifty year old man of poor health who has been unemployed since December of 1972. He is a man of limited education and few productive skills.

Defendant (same)

Factual Allegations

1. Plaintiff-Intervenor lives alone in a rented room at 69 Main Street, Vergennes, Vermont.
2. Plaintiff-Intervenor has received General Assistance from the Vermont Department of Social Welfare for nine consecutive months, except for a five week period of hospitalization in April and May of 1973.
3. This assistance has been the sole means of support for Mr. Stone, and he has relied on it for all basic necessities of life.
4. Plaintiff-Intervenor has received this General Assistance weekly, except for the aforesaid period of

hospitalization, for food and personal needs in the amount of \$23.00, which figure has been constant for the nine months ending October 29, 1973.

5. Plaintiff-Intervenor has received this General Assistance weekly, except for the aforesaid period of hospitalization, for room rent in the amount of \$15.00, which figure has been constant for the nine months ending October 29, 1973.

6. Plaintiff-Intervenor's General Assistance was interrupted on November 5, 1973, when the District Director of the Middlebury Office of the Vermont Department of Social Welfare made the factual and legal determination that plaintiff-intervenor had not complied with the employment effort requirements of the Department of Social Welfare's General Assistance regulations (Welfare Assistance Manual, Section 2607).

7. Plaintiff-intervenor was not given advance notice of the interruption of benefits, and was not given an opportunity for a prior hearing at which he might contest the interruption of benefits.

8. The interruption of benefits on November 5 has left plaintiff-intervenor without the support, maintenance, and necessities of life for which General Assistance is provided. This has resulted in the immediate threat of irreparable injury to plaintiff-intervenor.

Statement of Claim (substantially the same)

Irreparable Injury (same)

Prayer for Relief

WHEREFORE, plaintiff-intervenor prays that this

Court:

- A. Assume jurisdiction of this cause;
- B. Enter a declaratory judgment declaring that the defendant's practice of terminating General Assistance grants without affording the recipients thereof adequate notice and a hearing at which they may contest the factual and judgmental bases of the action denied plaintiff-intervenor due process of law under the Fourteenth Amendment to the United States Constitution.
- C. Issue a temporary restraining order, preliminary and permanent injunction restraining defendants from terminating, interrupting, or suspending the General Assistance maintenance grants of plaintiff-intervenor unless he is first given proper notice and an opportunity for a hearing at which he may contest the factual and judgmental basis of the termination or suspension action.
- D. Grant such other relief as the Court may deem equitable and just.

TEMPORARY RESTRAINING ORDER

The above case came on for hearing on November 13, 1973 on plaintiff-intervenor's application for a temporary restraining order and memorandum in support of the application, the verified complaint, and the arguments of counsel. It appearing that plaintiff-intervenor will suffer immediate and irreparable harm if his General Assistance maintenance benefits are arbitrarily interrupted in that he will be without the means of subsistence; and it appearing further that plaintiff-intervenor has demonstrated a probable chance of success on his claim that the interruption of his benefits, without being afforded prior notice and opportunity for a hearing to contest the factual and judgmental bases of the defendant's termination action, denies him due process of law;

NOW, THEREFORE, it is ORDERED AND ADJUDGED that the Defendant, Paul Philbrook and employees and agents of the Vermont Department of Social Welfare are restrained temporarily from continuing to withhold General Assistance maintenance benefits from plaintiff-intervenor, without first affording him proper notice and an opportunity for a hearing before an impartial officer at which time he may contest the factual and judgmental bases of the defendant's actions.

By stipulation of the parties and approval of the Court, this temporary restraining order shall remain in effect until

a hearing on a preliminary injunction shall be held or until
such other time as the Court may direct.

Date: December 3, 1973

JAMES S. HOLDEN

James S. Holden
Chief United States District
Judge

REPORT ON
THE GENERAL ASSISTANCE STUDY

Prepared For
THE DEPARTMENT OF SOCIAL WELFARE
By
THE AGENCY OF HUMAN SERVICES
OFFICE OF PROGRAM ANALYSIS

April 2, 1973

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INTRODUCTION

This report presents information gathered during a twenty-four day study of Vermont's General Assistance program. The study constitutes a response to certain information requirements of the Department of Social Welfare. It addresses a number of critical problems that the Department faces in managing General Assistance.

The Department's General Assistance (G.A.) program expenditures in Fiscal Year 1973 were in excess of the program's appropriation and the Department lacks sufficient information to answer the critical "Why?" District office waiting rooms are overrun with applicants for the program's emergency funds. The staff time required to meet those needs continues to be inadequate in most districts. Although the General Assistance program demands a relatively small portion of the total Department expenditures for public assistance, the crowded waiting rooms, the drain of worker time from other programs and the rising costs that result from General Assistance attract a disproportionate amount of attention to the program. The Department hopes to find out who is receiving General Assistance funds and why this program, which operates without Federal government contributions, has become such a burden.

2.1

CAPSULIZATION OF STUDY RESULTS

The following outline lists many of the specific conclusions of this study. Annotations are listed to provide reference to the supporting information in the paper:

- o General Assistance serves a different client population than that for which the program was designed, (3.0).
- o As G.A. workers suggest (3.1), the client population is disproportionately young (3.21), single (3.23), and male (3.25).

- o Age distributions are very similar in district offices across the state (3.22).
- o A disproportionately large group of G.A. clients is either divorced or separated (3.24), (3.25).
- o Demographic data representing the Burlington district skews the statewide distributions in many categories not because of radical differences in age, marital status, etc., but because that district contains one-third of the state's G.A. applicants (3.25).
- o Unemployment is the major cause of the large G.A. workload (3.0, 3.4), but no direct statistical relationship could be drawn from our data (3.4).
- o G.A. assists large numbers of families with children (3.27).
- o Many G.A. applicants are marginally employed seasonal workers (3.4).
- o Eighty-five percent of G.A. applicants have lived in Vermont more than a year and a half, and 93 percent could qualify as legal residents (3.26).
- o G.A. assists two distinct categories of people. One group is that provided with short-term, emergency assistance, but the major reason for the high G.A. expenditures is the "LARGE, DIFFERENTIABLE, ONGOING CASELOAD," (3.1, 3.4, 3.62, 3.7).
- o Over HALF of the G.A. applicants have been unemployed for more than six of the twelve months preceding their applications for assistance, (3.4). Those citizens include people who are not actively seeking work, and those for whom jobs are simply not available (3.4).

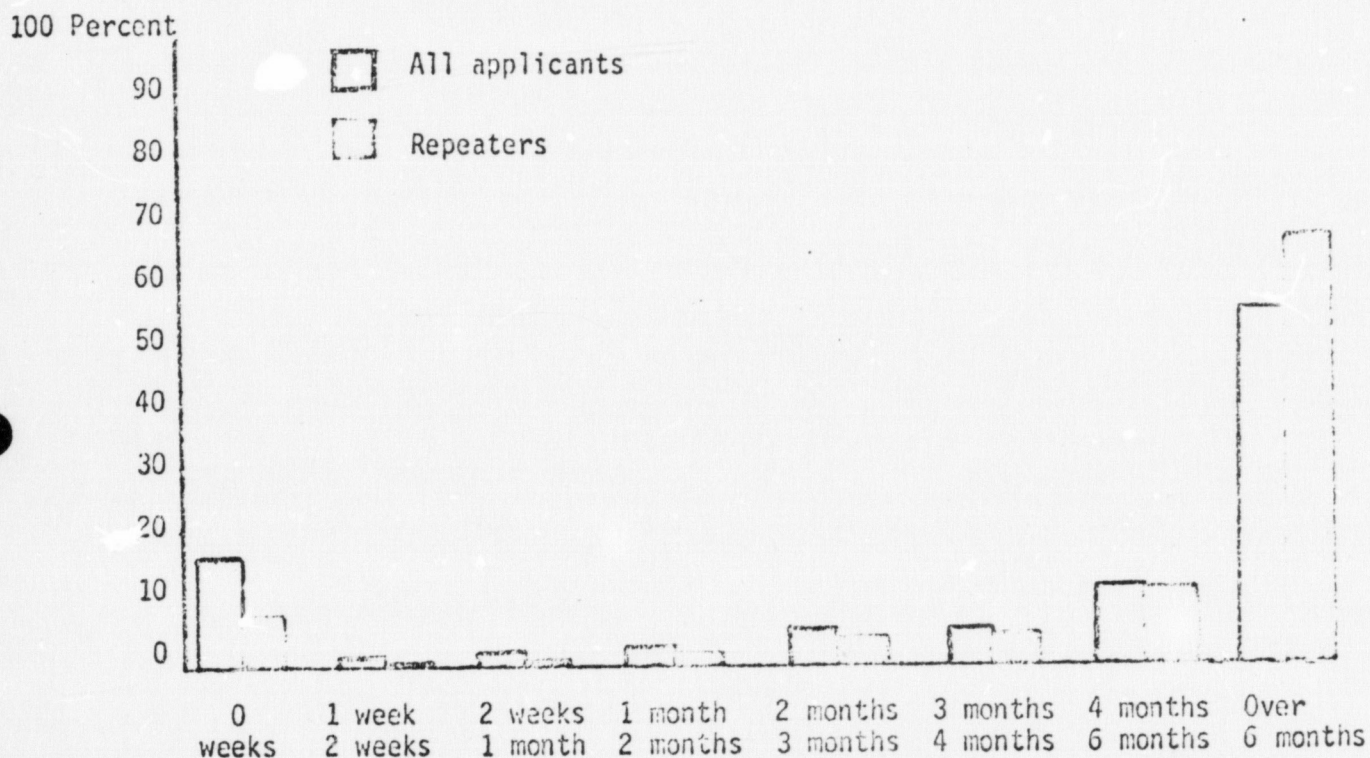
- Young single people are heavily represented in the G.A. population because, of all low income applicants, they are least likely to be eligible for other categorical assistance programs (3.7).
- High denial rates do not seem to discourage new applications for assistance (3.7).
- G.A. application rates (as percentages of district population) are lowest not necessarily in the districts which deny the most applications, but rather, in those which have the smallest ongoing caseloads (3.7).
- The "ongoing caseload" clients must be considered on the same basis as are new applicants each time they come to the district offices. Many workers suggested longer periods of issuance (i.e., one month's rather than one week's food allowance) for clients who can be expected to remain eligible for G.A. over a long period (3.7).
- Many workers have not experienced any centralized training program (4.1).
- The General Assistance Worker's job is likely to be defined by the office where he works (4.1).
- Good interviewing skills which enable the worker to discover large amounts of information in a short time are considered essential to the G.A. job (4.1).
- This study could not develop a standard for determining optimum G.A. staff levels. It is suggested (4.2) that such decisions be arrived at through consultation with district staff.

- Workers seek regulations that allow judgmental flexibility but provide reliable, statewide general operating procedures (4.4).
- A standard documented exceptions procedure is advocated to allow such flexibility.
- There is great support for eligibility calculations based on net income rather than gross income (4.4).
- District personnel are uncertain as to whether or not the "ANFC Standard" constitutes an upper limit on the amount of a G.A. grant (4.4).
- The accounting period used in eligibility determination varies among the districts (4.4).
- District workers deemed speedier voucher (vendor payment) processing necessary if vouchers are to be accepted by vendor recipients (4.4).
- The G.A. food allowance is considered inadequate (4.4).
- More interprogram communication is asked. G.A. workers do not feel that every district operates within the same rules or with the same knowledge. Additionally, it is believed that Fair Hearing results should be incorporated in the program regulations (4.4).
- Without radical changes in the program's response to the actual G.A. population or in those factors that have affected G.A. expenditures in the last three years, annual expenditures (exclusive of hospital and funeral payments) can be expected to amount to three million dollars by 1980 (4.5).

RESULTS OF SURVEY QUESTIONNAIRE

The district G.A. workers seem convinced that subscription to the program is very directly related to employment patterns in the state. This conviction cannot be verified or contradicted by the survey data because of the short period which the survey data represents. The relationship between unemployment rates and G.A. expenditures and office activity requires study. Such further study should investigate the time lags between a client's 1) loss of employment, 2) receipt of unemployment compensation (UC), and 3) resort to G.A. funds after a subsequent loss of U.C. That investigation is beyond the scope of this survey. We can identify, however, the number of General Assistance applicants who were seeking and receiving unemployment compensation, those whose compensation was depleted, and those who were ineligible for U.C. Receipt of or ineligibility for Unemployment Compensation gives some indication of a particular client's recent work experience and is valuable as a source of that information as well as for its reflection of future G.A. demands. As Table 3.4-1 shows, the majority (54%) of G.A. applicants have been unemployed more than six months in the year preceding their G.A. applications.

WEEKS UNEMPLOYED IN LAST 12 MONTHS
FOR ALL APPLICANTS AND APPLICANTS RECEIVING G.A.
3 OR MORE TIMES IN THE PRECEDING 30 DAYS



| Weeks Unemployed Last 12 Months | All Applicants | Percent | Repeater* Applicants | Repeater Percent |
|------------------------------------|-------------------|-----------|-------------------------|---------------------|
| None | 598 | 16 | 131 | 7.6 |
| 1-2 | 32 | 1 | 3 | .2 |
| 3-4 | 69 | 2 | 18 | 1.0 |
| 5-8 | 93 | 3 | 33 | 1.9 |
| 9-12 | 224 | 6 | 79 | 4.6 |
| 13-16 | 220 | 6 | 88 | 5.1 |
| 17-24 | 423 | 12 | 203 | 11.8 |
| 25-52 | <u>1975</u> | <u>54</u> | <u>1161</u> | <u>67.7</u> |
| TOTAL | 3634 | 100 | 1716 | 100 |

NOTE: 47.2% of applicants received G.A. three or more times in the preceding 30 days.
*Repeaters are applicants receiving G.A. three or more times in the preceding 30 days.

Since the survey form reports the applicant's employment history and not necessarily that of the head of household, some exaggeration of this trend is possible.* In any event, most applicants seem to follow the pattern the district interviews suggested. The data also suggests that the applicants' employment records are spotty and seasonal by nature. Sixteen percent (16%) reported full employment in the last twelve months. Members of this subgroup have either recently lost their jobs; been laid off for an extended period, or earned an insufficient amount from their jobs to meet their needs. These employment indicators point to the existence in the G.A. population of the nationally unassisted group known as the "working poor" who, in this state, seek aid from General Assistance.

Table 3.4-1 also depicts the employment experience of repeating applicants, that 47% of the G.A. population who have received grants more than two times in the last thirty (30) days.

*Since 71% of the applicants are males, the likely heads of intact families, the exaggeration is probably small. The revised survey form increases the reliability of this data by requesting information of Heads of Households.

The "repeater" applicant* and his implications for the General Assistance program are considered fully in Section 3.62. It is apparent, however, that such clients create special problems for G.A. One aspect of the ongoing G.A. caseload is the high incidence of long-term unemployment among its constituents. That situation is displayed on the graph in Table 3.4-1, which shows the contrast between the employment histories of "repeaters" and those of the G.A. population in general. Fully two-thirds of the repeaters have been unemployed more than six months in the year previous to their current applications. Just over half of all G.A. applicants (including repeaters) have been unemployed for over half of the last year. Similarly, sixteen percent of all G.A. applicants (as opposed to only 7.6 percent of the repeaters) have experienced no unemployment in the twelve months previous to their current applications.

Sporadic employment not only cripples the normal economic stability of a working person, but also limits his eligibility for assistance. In order to receive Unemployment Compensation, he must have worked twenty (20) of the preceding fifty-two (52) weeks at thirty dollars per week and at a job covered by U.C. If he has met those criteria, his benefits from U.C. last only twenty-six weeks.** In light of the fact that 54 percent of all G.A. applicants (and 67.7% of the repeaters) have worked less than six of the last twelve months, often at jobs which field workers have described as "seasonal," it is intuitive that many applicants are ineligible for Unemployment Compensation. Upon losing their jobs, these citizens must resort to General

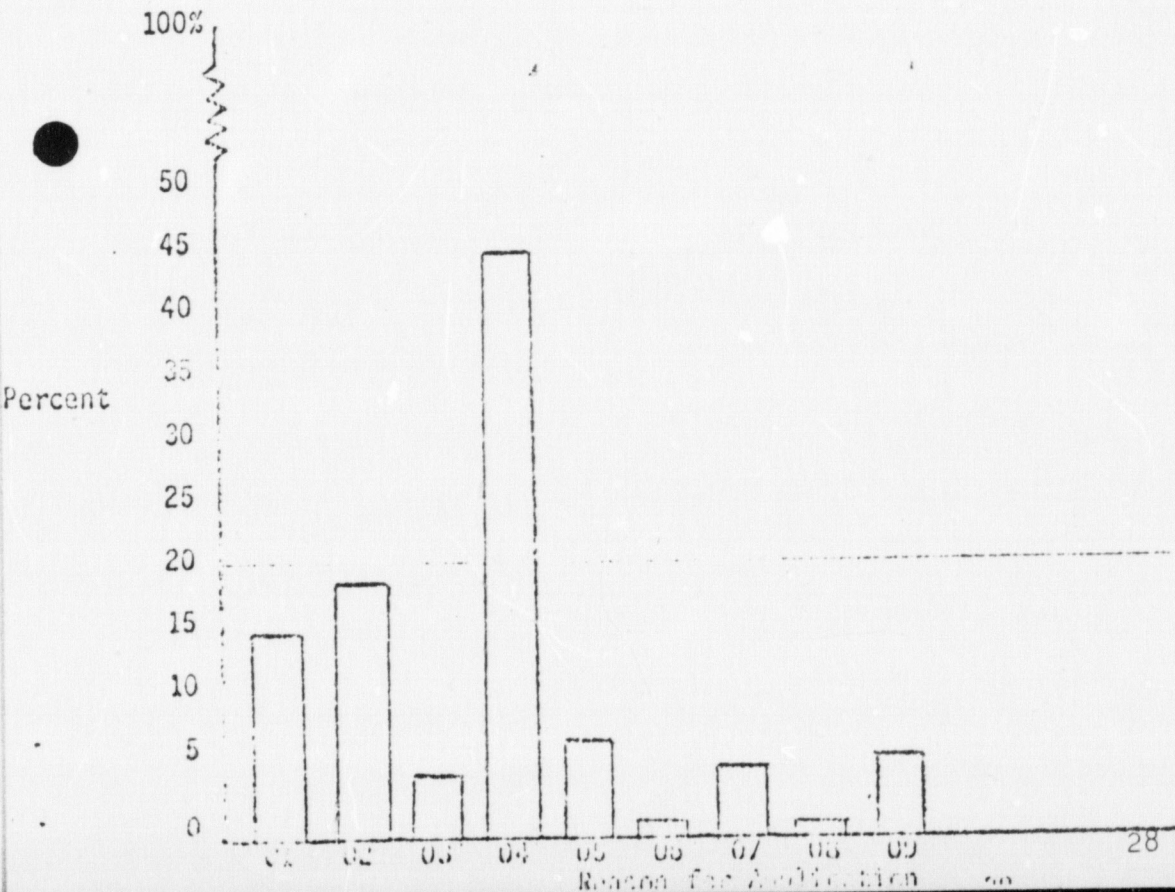
*For the purpose of delineating a "repeater" status we considered clients who received G.A. grants three or more times in the last month "repeaters."

**U.C. Benefits can last up to a year if certain unemployment conditions exist in the state.

TABLE 3.4-2

REASON FOR G.A. APPLICATION

| Code | Reason for Application | Applicants | Percent |
|-------|---|------------|----------|
| 01 | Illness | 479 | 14 |
| 02 | Unemployed - Pending UC Benefits | 637 | 18 |
| 03 | Unemployed - Depleted UC Benefits | 149 | 4 |
| 04 | Unemployed - Not Eligible for UC Benefits | 1570 | 45 |
| 05 | Underemployed | 241 | 7 |
| 06 | Underemployed - Self-employment | 40 | 1 |
| 07 | Pending Categorical Assistance | 165 | 5 |
| 08 | Natural Disaster | 22 | 1 |
| 09 | Other | <u>220</u> | <u>6</u> |
| TOTAL | | 3523 | 100 |



Assistance and, as Table 3.4-2, a distribution of "reasons for G.A. application," demonstrates, the most frequent reason for application is "Unemployed - Not Eligible for U.C. benefits."

Three reasons for the applicants' ineligibility for U.C. are posited: 1) the applicant does not work; 2) the applicant has not worked a sufficient number of weeks in the past twelve months; and/or 3) the applicants job was not covered by U.C. The survey data falls short of breaking out the category into those constituent parts. The second and third possibilities are not uncommon situations, but it is probably true that many of the applicants have not worked because either they are not seeking jobs, they are not employable, or they are simply unable to find jobs.* Those clients who are "not seeking employment" represent but one facet of the group not covered under Unemployment Compensation whose loss of work has resulted in G.A. expenditures. It is likely that attention to the other reasons for gaps in U.C. coverage would disclose alternative directions to G.A. administrators.

While forty-five percent of G.A. applicants are ineligible for U.C., it is true (as suggested by district workers and reported in Section 3.3 of this report) that a large number of G.A. recipients are eligible for U.C. and are awaiting benefits from that program. Further reference to Table 3.4-2 will show that eighteen percent of the G.A. applications were submitted while the client was pending receipt of Unemployment Compensation. Four percent of the applicants requested G.A. because their U.C. benefits were depleted. It is clear from this

*Evaluations of the WIN program have identified many categorical grant recipients who are not seeking employment because they are not "employable" or who are unable to find and sustain employment even with the concentrated support of both D.S.W. and D.E.S.

information that G.A. fills the gaps in U.C. coverage. Another applicant group for which that argument applies is that which is receiving U.C., but at a benefit level lower than the ANFC standard. That group is represented among the six percent of G.A. applicants whose reason for application was listed as "other" on form T.G.A. and is classified that way on Table 3.4-2.

Although a direct relationship between unemployment levels and General Assistance activity in Vermont cannot be confirmed by this data, it does support the workers' contention that G.A. is vulnerable to unemployment patterns. Most of the G.A. applicants are unemployed or marginally employed. Sporadic or seasonal employment seems to be the rule, not the exception, among G.A. applicants, and when a worker loses such "marginal" employment and is not covered under Unemployment Compensation, his immediate resort must be G.A.

3.5 OTHER APPLICANT FEATURES - RESULTS OF FIELD INTERVIEWS

District personnel mentioned a number of other features of the applicant profile that are essential parts of that portrait. They expend considerable amounts of time dealing with applicants who are waiting for medical determinations which would qualify them for Aid to the Disabled and a related group of applicants who have been certified as disabled but are awaiting AD payments. These "pending A.D.'s" are another constituent of the ongoing G.A. caseload.

Transportation is a problem for many rural Vermonters and a greater one for those who have bare, subsistence incomes. This problem is transmuted into a specific G.A. issue when it is placed in the context of General Assistance "employment effort" provisions. Until March, 1973, G.A. regulations maintained that physically able applicants must "actively seek work for at least 35 hours per week." That rule was not enforceable but was used as a spur for clients who were making no attempt to find work. The revised "employment effort" regulation requires a certifiable twenty hour per week search for employment without evidence of which, able bodied clients are categorically denied assistance. But the transportation difficulties of rural Vermonters compound the effects of "employment effort" provisions based on the number of hours per week a person looks for work.

Often, rural citizens exhaust immediate-area job possibilities quickly and travel long distances to look for work. An example of this situation is found in the Brattleboro District, where certain clients live near ski resorts throughout the year and are "seasonally employed" in the winter. The unreliability of transportation to job markets in Brattleboro and Springfield curtails their jobseeking and transportation is even more difficult for them to maintain if they do find work. The Brattleboro District Office has told certain clients that they will be ineligible for G.A. payments unless they move closer to the employment market. Denials on the grounds of place of residence are of questionable legality as the District Director recognized, but that district "regulation" is, at least, an attempt to deal with the problem.

Other solutions must be found to deal with rural applicants, in the view of field workers. For more regular cases, Town Overseers have been used to contact distant clients. Outstations and periodically scheduled appearances by G.A. workers in towns outside the district centers might also be considered.

The most important contention of the district workers was that G.A. has an ongoing caseload, a large section of which can be expected to remain eligible for G.A. for a relatively specific length of time. Those clients are the "seasonally unemployed" and people who fall into the "pending" categories. Workers suggested that they might take the responsibility for determining which clients should receive ongoing G.A. grants and that affidavits stating that "no change has occurred in the assistance group's income level" could be sent to those clients with their weekly or bi-monthly checks. This procedure would eliminate the transportation difficulties of many ongoing clients who now must make frequent trips to distant district offices. It was suggested that frequently the applicant must spend a large portion of his grant on transportation to obtain it. He may spend hours in the district office waiting room for a five-minute certification that his status has remained the same. Valuable time is consumed by perfunctory duties of both client and G.A. worker.

3.6 OTHER APPLICANT FEATURES - RESULTS OF SURVEY QUESTIONNAIRE

Two of those remaining features of the client profile were addressed in the survey form. Those features are: 1) the number of

clients who are pending categorical assistance and 2) the number of applicants who are seeking an ongoing kind of assistance (i.e., the repeaters).

3.61 APPLICANTS WHO ARE PENDING CATEGORICAL GRANTS

As Table 3.4-2 (page 34) shows, the clients who are receiving G.A. pending their receipt of categorical assistance represents only five percent of all the applicants. While this figure is not commensurate with the concern over the number of pending applicants demonstrated by G.A. workers, obviously the impact of such cases on the workers is substantial. It is likely that providing G.A. for those clients on a weekly basis and continually repeating explanations for the delays causes such concern. More rapid processing of categorical claims is essential. Pending cases could be billed to their categorical programs unless the clients are determined ineligible. In that case, the pending period could be billed to G.A.

3.62 THE ONGOING CASELOAD

The most significant issue presented in this survey, in terms of program implications, is that of the ongoing caseload. The workers can identify "a large sector" of the cases with repeating recipients "who will remain eligible for G.A. for a relatively specific length of time." (Section 3.5) Those clients seek assistance on a weekly basis which necessitates both continuous redeterminations to certify their continuing eligibility and redundant, time consuming processing by the District Office.

TABLE 3.6-1

NUMBER OF APPLICANTS
RECEIVING G.A.
DURING PRECEDING 30 DAYS

| # Issuances Last 30 Days | # Applicants | % |
|--------------------------------|-----------------|------------|
| 0 | 473 | 13.8 |
| 1 | 600 | 17.5 |
| 2 | 454 | 13.3 |
| 3 | 446 | 13.0 |
| 4 | 1204 | 35.2 |
| 5+ | <u>246</u> | <u>7.2</u> |
| TOTAL | 3423 | 100% |

Table 3.6-1 displays the applicant population in terms of the number of G.A. grants the individual has received in the 30 days preceding his current application. This data demonstrates that G.A. is an ongoing assistance program and not a one-shot, emergency relief program. As a program indicator it has many implications that are fully developed in the next section of this report.

3.7 THE ONGOING CASELOAD - CONCLUSIONS, IMPLICATIONS & RECOMMENDATIONS

Demographic differences between districts produce considerable variations in district approach to the G.A. program. But unemployment problems and the makeup of the population are not markedly dissimilar in different parts of Vermont. The risk population for General Assistance consists of all adult citizens and while ANFC, AABD and other categorical programs of the Department of Social Welfare absorb many of the older citizens with marginal incomes, especially those with children, there is no equivalent income supplement program to aid young, single Vermonters who lack subsistence incomes. General Assistance is recognized as a program which caulks the seams between other Social Welfare programs. The controlling factor for G.A. is the manner in which cases are handled, not which population is served.

This report emphasizes the existence of a continuing caseload of General Assistance clients: those clients who are ineligible for grants under categorical programs, but whose limited incomes and assets qualify them for G.A. It should not be surprising, therefore, that G.A. assists quite a large number of young Vermonters. The largest poor

population without a social welfare program that addresses its specific needs consist of young, single, childless citizens who have tenuous connections to the labor force. General Assistance is their program because jobs are difficult for them to obtain and because services from social welfare are not available to them. The defaults of constructive alternatives to welfare dependency and the fact of their legal eligibility for the program induce those young, single clients to ask for General Assistance.

An argument presented by one Burlington G.A. workers pertains to this issue and requires reiteration. He maintained the clients most in need of services are those single young people who are in the process of establishing a pattern of welfare dependency. Under the G.A. current procedures, there may be no time to deal with those people as service cases. Only a marked decrease in office visits for most clients or a paring away of the eligible population can allow more time for General Assistance workers to examine the potential service clients problems as well as check his eligibility. As the program stands now, eligibility standards are reasonably lenient. The effects of DSW Emergency Regulation 2607 are still undetermined, but since lighter rules requiring active jobseeking do not in themselves produce new jobs, it must be assumed that the new regulation's impact may be small. Clients will continue to get jobs on their own initiative and to find ways to circumvent piecemeal regulations. Until services can be provided to aid the former course, the latter will be followed by certain segments of the client population.

The General Assistance recipients must be addressed as two distinct groups: one an emergency relief group, and the other an ongoing caseload. The sensible adjustment to address this evidence is to tailor the program to treat the ongoing caseload as such, eliminating the pretense and ingenuousness manifested by cases such as a situation in one district in which a client has been receiving G.A. checks on a weekly basis for more than three years. That client is clearly not the target of an emergency oriented program - he should be treated as a service case.

The General Assistance caseload has not grown simply because the program's eligibility requirements are flexible. Over one-third of the applicants who have not been issued G.A. in the previous 30 days are denied grants. Table 3.7-1 describes the denial rates on a district-by-district basis.

TABLE 3.7-1

TOTAL DENIALS AND DENIALS OF FIRST APPLICATIONS*

| District | A Applica- tions | B First Apps. | C Denials | D % Denied (C/A) | E 1st App Denied | F % of 1st Apps. Denied (E/B) |
|---------------|------------------------|---------------------|--------------|---------------------------|------------------------|--|
| Bennington | 220 | 44 | 24 | 10.9% | 20 | 45.5% |
| Brattleboro | 217 | 43 | 40 | 18.4 | 26 | 60.5 |
| Burlington | 1301 | 82 | 36 | 2.8 | 26 | 31.7 |
| Hartford | 181 | 34 | 23 | 12.7 | 16 | 47.1 |
| Middlebury | 144 | 20 | 18 | 12.5 | 15 | 75.0 |
| Montpelier | 410 | 68 | 12 | 2.9 | 8 | 11.8 |
| Morrisville | 296 | 37 | 25 | 8.4 | 13 | 35.1 |
| Newport | 121 | 32 | 7 | 5.8 | 6 | 18.8 |
| Rutland | 119 | 36 | 17 | 14.3 | 17 | 47.2 |
| St. Albans | 569 | 66 | 30 | 5.3 | 27 | 40.9 |
| St. Johnsbury | 192 | 34 | 10 | 5.2 | 7 | 20.6 |
| Springfield | <u>417</u> | <u>47</u> | <u>2</u> | <u>0.5</u> | <u>1</u> | <u>2.1</u> |
| STATE TOTALS | 4189 | 543 | 244 | 5.8% | 182 | 33.5 |

*Figures include all applications - computer report and hard tabulation.

The initial hurdle of eligibility determination is not easily overcome, but as the table below indicates, once a client's eligibility has been determined, he is progressively assimilated into an ongoing caseload. Whereas only thirteen percent of the tabulated forms represented a client's first G.A. application in more than one month, more than three quarters of all denials are made at that initial stage. This may indicate both that clients' financial situations fail to change after they begin to receive G.A. and that they do not reapply when income becomes available. In either case, denials diminish remarkably as the clients are acquired as regular applicants.

TABLE 3.7-2

NUMBER OF APPLICANTS DENIED BY NUMBER OF
ISSUANCES TO A CLIENT IN PREVIOUS 30 DAYS

| | <u>No. Applications Denied</u> | <u>% of all Denials</u> |
|------------------------|------------------------------------|-----------------------------|
| No Previous Issuances* | 182 | 74.6% |
| One Issuance | 27 | 11.1 |
| Two Issuances | 15 | 6.1 |
| Three Issuances | 8 | 3.3 |
| Four Issuances | 7 | 2.9 |
| Five or More Issuances | <u>5</u> | <u>2.0</u> |
| | 244 | 100% |

*Includes 22 blanks in field for issuances in last 30 days.

High rates of denial do not seem to discourage new applications. The districts with the highest rates of denial are not those with the lowest percentage of new applicants, as is demonstrated in Table 3.7-3.

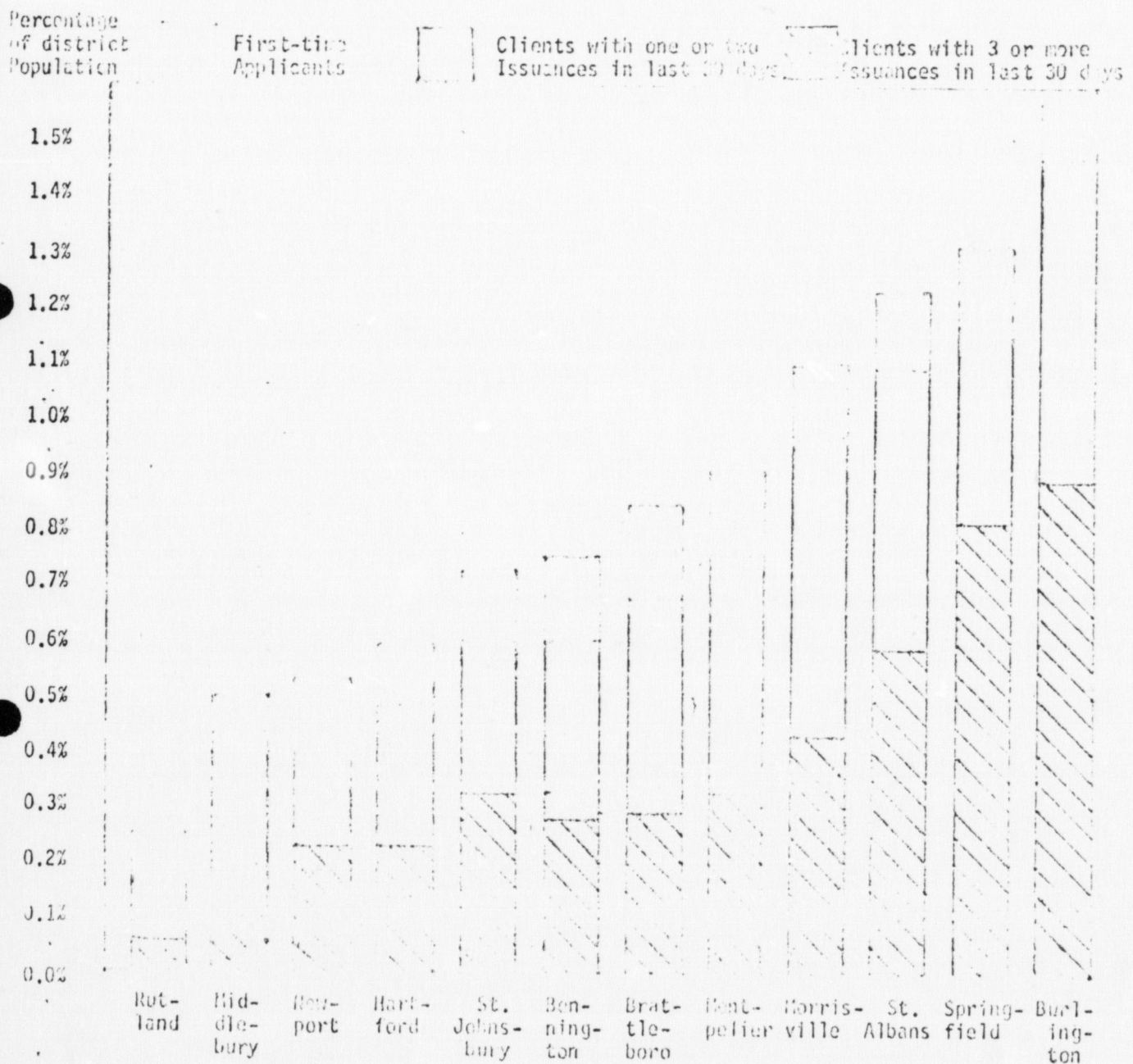
TABLE 3.7-3

| Percentage of New Applications Denied, by District | | New Applications As A Percentage of All District Applications | |
|--|-------------|---|--------------|
| 1. Middlebury | 75.0% | 1. Burlington | 6.3% |
| 2. Brattleboro | 60.5% | 2. Springfield | 11.1% |
| 3. Rutland | 47.2% | 3. St. Albans | 11.6% |
| 4. Hartford | 47.1% | 4. Morrisville | 12.6% |
| 5. Bennington | 45.5% | 5. Middlebury | 14.2% |
| 6. St. Albans | 40.9% | 6. Montpelier | 16.3% |
| 7. Morrisville | 35.1% | 7. St. Johnsbury | 17.8% |
| 8. Burlington | 31.7% | 8. Hartford | 18.8% |
| 9. St. Johnsbury | 20.6% | 9. Brattleboro | 19.9% |
| 10. Newport | 18.8% | 10. Bennington | 20.1% |
| 11. Montpelier | 11.8% | 11. Newport | 26.2% |
| 12. Springfield | <u>2.1%</u> | 12. Rutland | <u>30.5%</u> |
| STATEWIDE | 35.5% | STATEWIDE | 13.0% |

A high percentage of first applications indicates a healthy situation in which clients are not plugged into an ongoing G.A. caseload. It indicates that, rather than remaining in the General Assistance caseload, clients are being absorbed by categorical programs

TABLE 3.7-4

GENERAL ASSISTANCE APPLICATION RATE
(APPLICATIONS AS PERCENTAGE OF DISTRICT POPULATION*)
DISPLAYING THE IMPACT OF THE ONGOING CASELOAD
ON GENERAL ASSISTANCE ACTIVITY



*1970 Census

or are finding self-supporting jobs in districts where the percentage of new applications per total applications is high. In those districts, total G.A. caseloads are lower, as percentages of the populations, and it is possible that they are lower not because new applications are discouraged, but because services to active clients can be provided since workers have the time to do more than process applications. Table 3.7-4 illustrates the relationship between the new application rate and the size of the G.A. workload (calculated as a percentage of the district population).

If clients, in a district such as Rutland, where grants to new applicants represent one-fifth of all the district G.A. grants, were remaining in the G.A. caseload, that caseload would experience rapid growth. Such growth is not apparent. Our conclusion is that Rutland clients are being moved off the G.A. caseload, not by a severe denial rate but by thoughtful referrals to categorical programs and by clients' access to employment. In Burlington, grants to new applicants represent a miniscule 4.4 percent of all applications, but the total G.A. caseload there is the highest in Vermont in relation to the district population. G.A. workers are bogged down in an immense lake of permanent G.A. clients, who take as much of a worker's time to process as do new applicants.

The continuing caseload - clients who are required to report to the District Offices every week and some of whom appear as many as nine times a month there - is the bane of General Assistance. The number of individual clients in that caseload is not its crucial significance. Rather, the number of interviews they require and the

amount of pressure on the offices they create constitute their impact. G.A. provides them with vital financial aid but there is scant opportunity for G.A. workers to evaluate their positions and help set goals beyond their next G.A. check.

We recommend a longer period of issuance be made possible, at the worker's discretion, for clients who need long-term assistance. Such a procedure could cut into the G.A. workload considerably without affecting the number of people the program can help. Interviews in which eligibility was not at issue could then be arranged to explore the client's goals and provide him with services that might help him achieve those goals.

4.0

STAFFING

Both interviews and the survey forms addressed the staffing issues of General Assistance.

4.1

STAFFING - RESULTS OF FIELD INTERVIEWS

The district interviews were conducted during the initial stages of the study. Their results consist of the subjective opinions of District Directors and field staff but those opinions served both as guidelines for examination of data and as impressionistic resources. Since the interviews were conducted, ten new G.A. workers have been trained and have entered service in the field. Their Central Office training program and their addition to district staffs should both relieve G.A. workloads and make G.A. provision more uniform. In mid-

5.0

STUDY RECOMMENDATIONS

In response to the apparent need to improve the organizational effectiveness of the General Assistance program, the study team proposes certain revisions in the program's goals and procedures. These initiatives are intended to help make G.A. more responsive and equitable to the people it serves, less difficult for the field workers who handle its responsibilities and sounder in terms of its fiscal future.

5.1

We advise program recognition of the "ongoing caseload" problem. Workers should be granted the authority to issue G.A. for longer periods of time. Just as checks are now issued for one-month periods to cover rent payments, such long term payments should be possible, at the worker's discretion, to meet other needs. Such a procedure should:

- 1) decrease office activity (perhaps by 50 percent),
- 2) eliminate redundant and fruitless eligibility determinations,
- 3) allow workers to schedule appointments to examine their clients' long range needs on days when the clients' eligibility is not at issue, and
- 4) provide worker time for more thorough eligibility verifications.

TABLE 6.2

REPEATER RATE BY DISTRICT

| <u>District</u> | <u>Repeaters</u> | <u>Applicants</u> | <u>Repeat Rate</u> |
|-----------------|------------------|-------------------|--------------------|
| Bennington | 69 | 194 | 35.6 |
| Brattleboro | 65 | 191 | 34.0 |
| Burlington | 652 | 1150 | 56.7 |
| Hartford | 63 | 160 | 39.4 |
| Middlebury | 25 | 127 | 19.7 |
| Montpelier | 130 | 362 | 35.9 |
| Morrisville | 105 | 261 | 39.0 |
| Newport | 48 | 107 | 44.9 |
| Rutland | 22 | 105 | 21.0 |
| St. Albans | 232 | 502 | 46.2 |
| St. Johnsbury | 76 | 169 | 45.0 |
| Springfield | <u>228</u> | <u>368</u> | <u>62.0</u> |
| STATEWIDE | 1715 | 3696 | 46.4 |

AFFIDAVIT OF PAUL PHILBROOK

Paul Philbrook, being duly sworn, states as follows:

1. I am Commissioner of the Vermont Department of Social Welfare and have served in this capacity since January, 1973.
2. By the provisions of 33 VSA §2505, I am charged with full responsibility for the operation of the Department. My statutory duties and powers include, among other things, the administration of laws assigned to the Department, the fixing of standards and regulations necessary to administer those laws, and the determination of Departmental policy.
3. As Commissioner, I have interpreted the Vermont statutes establishing the General Assistance program, and have established policies for the operation of that program.
4. It is my position that the legislature intended the program to meet only the emergency needs of those individuals who have no other source of income and resources. The program is not designed to provide continuous, on-going assistance.
5. With this legislative interpretation in mind, I have promulgated and applied certain regulations which emphasize the emergency nature of the program. For example, where at all possible, assistance is granted to cover a period of only one week. Thus, applicants must re-apply for each week they wish to receive assistance. In addition, applicants must meet certain eligibility criteria every time they apply. In fact, for each application after the first, the individual must meet an additional requirement, namely that his income during the preceding

30 days was below the present standard for ANFC. Also, able-bodied individuals are required to look for work a certain number of hours before assistance will be granted a second time. The whole regulatory scheme, therefore, is designed to discourage individuals from developing a sense of reliance on General Assistance, and to provide assistance only to those genuinely in need.

6. It is also my policy that the General Assistance regulations be strictly applied. Case workers in the district offices are obligated to review each application carefully. This involves a re-determination of eligibility each time an individual applies, regardless of the number of times an applicant has received General Assistance in the past. It also involves an explanation by case workers to applicants that General Assistance is a limited program which should not be viewed as a continuous source of assistance.

7. Certainly, there are exceptional cases where an individual receives General Assistance on a regular basis over a long period of time. Nevertheless, it is my policy to treat these individuals on a week-by-week basis like all other applicants. They must re-apply each week, and meet all the eligibility criteria for each application. It is not my policy to treat these individuals as being generally eligible for continuous assistance.

s/
PAUL R. PHILBROOK
Commissioner of Social Welfare

AFFIDAVIT OF ANDREW LEADER

Andrew Leader, being duly sworn, states as follows:

1. I am employed as a General Assistance caseworker in the Middlebury district office of the Vermont Department of Social Welfare. As such, I have been responsible for processing the applications of Joseph Stone, and for making eligibility determinations concerning his applications.

2. Mr. Stone was first granted General Assistance on March 28, 1973. He received assistance again on April 4th. He also submitted an application for benefits under the Aid to the Disabled (AD) program on that date.

3. Mr. Stone next received General Assistance on May 14th. It is my understanding that between April 4th and May 14th, he was hospitalized.

4. He received General Assistance every week from May 14th until November 5th, on which date I denied his application.

5. On July 27th, his application for AD benefits was denied. However, he submitted a second application on August 13th. He was denied on October 16th.

6. From April 4th, when his first AD application was submitted, until after October 16th, when his second AD application was denied, Mr. Stone was not required to meet the work-seeking requirement of regulation §2607. He was presumed to be unable to work because of his pending AD applications.

7. For each General Assistance application, however, I reviewed Mr. Stone's status and made a separate eligibility determination, based upon the applicable eligibility criteria. As it turned out, his situation was stable from week to week during this period.

8. On October 23rd, Mr. Stone again applied for and was granted assistance. I informed him, however, that henceforth he would also have to meet the work-seeking requirement since he no longer had an AD application pending and was presumed able to work. I informed him that he would have to look for work for at least 20 hours during the seven days immediately preceding his next application, and that a failure to do so would result in the denial of assistance. I provided Mr. Stone with the appropriate form so that he could document his efforts.

9. When he next returned on October 29th, the form indicated that he had sought work for 22 hours, including 6 hours at a gas station, 5 hours at another employer, and 4 hours at another. I found that he met all eligibility criteria and granted assistance. I told him, however, that he had spent excessive amounts of time at certain employers and should make a better effort if he intended to apply again.

10. On November 5th, he re-applied. I found that he met all eligibility criteria except for the work-seeking requirement. He had only looked for work for four hours during the preceding seven days. He told me that he had been unable to look for work more because of bad weather and lack of transportation.

I was compelled to deny his application. However, I informed Mr. Stone of his right to a "fair hearing" if he wished to contest the decision. He subsequently requested such a hearing.

11. Mr. Stone returned during the following week, however, and was granted assistance.

s/
ANDREW LEADER

AFFIDAVIT OF VASILI BELLINI

Vasili Bellini, being duly sworn, states as follows:

1. I am Director of Income Maintenance for the Vermont Department of Social Welfare. In this capacity, I have reviewed the results of two recent surveys of the General Assistance program.

2. During November, 1973, a statewide General Assistance survey was conducted in order to determine certain characteristics of the General Assistance program.

3. The survey revealed that approximately 2100 people applied for General Assistance during the month. 62% of the applicants applied only once during the month; 17% of the applicants applied twice; and 10% of the applications applied three times. The remaining 11% applied four or more times.

.. Another survey was conducted during March, 1974, at the Barre District Office. A slightly different approach was taken for this survey. The survey was designed to determine the history of those General Assistance recipients who received assistance during January, 1974. The history of each such January recipient was traced back eight weeks. For example, if an individual received General Assistance during the last week in January, his case record was reviewed to determine how many times he had been a recipient during the preceding eight weeks. The same procedure was followed for all those who received General Assistance during any week in January. The survey was also designed to show the number of applicants who were "employable," and the number who were "unemployable" by Department standards.

5. A total of 263 individuals were included in the sample. Of those, 36% received GA only once during an eight-week period, 21% twice; 12% three times; 6% four times; and the remaining 25% more than four times. However, only 29% received GA during three or more consecutive weeks.

6. The survey also showed that 65% of all recipients were "unemployable," while 35% were "employable." The former category consists of those individuals who have applied for benefits under one of the categorical programs and are awaiting an eligibility determination, or for some other reason are unable to work, or are employed full time but need an income supplement. Individuals in this category are not required to meet the work-seeking requirement of regulation §2607 in order to be eligible for assistance. The latter category consists of those individuals who are able-bodied. Included in this group are those who are awaiting receipt of unemployment compensation, or have depleted their UC benefits, or are receiving insufficient UC; those who are working less than fulltime; those who are awaiting an eligibility determination for the Aid to Needy Families with Children - Unemployed Fathers program; and those who are otherwise able to work. Individuals in this group are required to meet the work-seeking requirement.

7. Of those individuals considered "employable," 37% are 24 years of age or under, 65% are 30 years of age or under, and 82% are 36 years of age or under.

s/
VASILI BELLINI
Director of Income Maintenance
Department of Social Welfare

AFFIDAVIT OF WILLIAM E. GRIFFIN

William E. Griffin, having been duly sworn, states as follows:

1. I am the Vermont Human Services Board hearing officer and, although the title of the job has varied, I have served in that capacity for approximately four years.

2. In my capacity as the Human Services Board hearing officer, I serve as the presiding officer at hearings requested by general assistance applicants or recipients who are agrieved (sic) by actions of the welfare department with respect to their general assistance benefits.

3. I am responsible for receiving requests for such hearings, scheduling the hearings, and submitting recommendations as to disposition to the Human Services Board for its action.

4. In the performance of the above-described functions, I have maintained records which reflect for each case the elapsed time between my receipt of the hearing request and the date of release of the Human Services Board decision.

5. These records indicate that during the calendar year preceeding the date of this affidavit the average time between my receipt of a hearing request relating to general assistance and the release of the Human Services Board decision in such case was 38 days. There were 27 such cases during said calendar year, but only 23 were used to obtain the above average because the other four cases involved substantial delays at the request of the petitioners.

6. The minimum time between receipt of request and release of decision in the 23 cases considered above was seven days. The maximum time was 66 days.

William E. Griffin, Esq.

ORDER

On May 2, 1974 a hearing was held on plaintiff's motion for summary judgment. The facts which plaintiff relied upon in support of this motion were the factual allegations in plaintiff Joseph Stone's verified complaint and the Report on the General Assistance Study prepared for the Department of Social Welfare by the Agency for Human Services which was the subject of plaintiff's request to admit dated February 26, 1975.

As part of defendant's opposition to the motion for summary judgment, several affidavits were submitted to the Court which were not challenged by plaintiff at the hearing held on this motion.

Although the parties represented at the hearing that there was no genuine issue of fact concerning the matter before us, the Court notes a factual deviation that could potentially have significance in the resolution of the issues presented in the motion for summary judgment. The Report on the General Assistance Study contains a statistical analysis of the number of General Assistance grants individual applicants received in a given thirty day period. Table 3.6-1, Study section 3.62 pp. 43-45. The affidavit of Vasili Bellini filed with the Court April 17, 1974, makes reference to a similar study with what appears to the Court to be rather different statistical conclusions. Although

normally a genuine dispute as to a material fact justifies denial of a motion for summary judgment, see Rule 56 Fed. R. Civ. P., in this case, two agencies of the State are seemingly at odds concerning the number of general assistance recipients who receive assistance on a regular basis. Moreover, counsel for both plaintiff and defendant indicated to the Court at the hearing that there was no significant controversy over the facts in this case.

Since the parties have fully briefed the legal question and fully presented their arguments at the hearing, the Court believes it is in the best interest of judicial economy to require the parties within twenty days of the date of this order to file a stipulation indicating which survey, if either, properly presents the facts concerning repetitive general assistance recipients or in the event the parties cannot so stipulate, the parties shall file a stipulation containing, inter alia, the background, method of preparation, date of preparation and all other pertinent data relative to the statistics appearing at table 3.6-1 of the Report on the General Assistance Study and the surveys reported in paragraphs 2 through 7 in the affidavit of Vasili Bellini. Some explanation as to the reasons for the apparently different outcomes in these studies should also be supplied to the Court. In the event the parties cannot agree on any of these items, or the Court deems

necessary, the case will be set down for hearing on the merits as soon as the Court's schedule permits.

Dated at Burlington in the District of Vermont,
this 13th day of May, 1974.

Albert W. Coffrin
District Judge

STIPULATION

In response to the Court's order in this matter dated May 13, 1974, the parties hereto, through their undersigned attorneys, hereby stipulate and agree as follows:

1. Table 3.6-1 of the Report on the General Assistance Study, which is before the Court pursuant to plaintiff's request to admit, should be disregarded by the Court insofar as it purports to present facts concerning the number of individuals who are repetitive General Assistance recipients. The Study should be so disregarded because the data therein represent the number of applications for General Assistance instead of the number of individuals applying, thus counting some people more than once.

2. The data contained in paragraph 3 of the affidavit of Vasili Bellini filed with the Court April 17, 1974, properly presents the facts regarding the number of times each individual surveyed applied for General Assistance during the thirty day period covered by the November, 1973, survey.

3. The data in paragraphs 4 through 7 of the affidavit of Vasili Bellini filed with the Court April 17, 1974, properly presents the facts regarding the number of times General Assistance was received by the persons surveyed during the period covered by the March, 1974, survey.

4. The parties are agreed that further analysis of the data from the March, 1974, survey shows that 39% of the recipient surveyed received no General Assistance during the preceding

thirty days; 22% received General Assistance once during the preceding thirty days; 12% twice; 12% three times; 13% four times; and 2% five times.

5. The parties are further agreed that the November, 1973, survey shows that 79% of all applicants for General Assistance applied twice or less during the thirty day period covered by the survey, whereas 21% of such applicants applied three or more times.

6. The parties are further agreed that the March, 1974, survey shows that 73% of those actually receiving General Assistance received it twice or less during the thirty days preceding the date used in the survey, whereas 27% received General Assistance three or more times during the preceding thirty days.

7. The parties are further agreed that, while the November survey deals with applicants for General Assistance and the March survey deals with recipients, taken together the surveys suggest that approximately one-fifth to one-quarter of the General Assistance caseload receives General Assistance three or more times a month.

DATED at Burlington, Vermont, this 29th day of May, 1974.

/s/ Dean B. Pineles
DEAN B. PINELES
Assistant Attorney General
State of Vermont
Montpelier, Vermont
ATTORNEY FOR DEFENDANT

/s/ S. W. Kimbell
STEPHEN W. KIMBELL
Vermont Legal Aid, Inc.
192 Bank Street
Burlington, Vermont
ATTORNEY FOR PLAINTIFF

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

| | | |
|-------------------------------|---|-----------------|
| Joseph Stone | : | |
| | : | |
| v. | : | Civil Action |
| | : | |
| Paul Philbrook, Individually: | : | File No. 73-104 |
| and as Commissioner of the : | : | |
| Vermont Department of Social: | : | |
| Welfare | : | |

OPINION AND ORDER

This civil action commenced on April 10, 1973, by Robert St. Amour involves a determination of whether or not Goldberg v. Kelly, 397 U.S. 254 (1970), applies to the termination of benefits under Vermont's General Assistance Program. See 33 V.S.A. §§ 3001, et seq. The plaintiff Joseph Stone was allowed to intervene on November 13, 1973, and on March 5, 1974, upon the stipulation of the parties, the original plaintiff was dismissed. On February 26, 1974, the plaintiff filed a motion for summary judgment and on June 20, 1974, he filed a motion for class action determination. It now appears that the plaintiff stopped receiving general assistance in May, 1974, before the summary judgment motion had been disposed of and before the class action request had been filed. Consequently the defendant has moved to dismiss on the basis that the case is now moot.

I

The Defendant's Claim of Mootness

On the particular facts of this case, as evidenced by the pleadings and supporting affidavits, the Court is convinced that the plaintiff's claim is not moot because the claim is based upon a governmental policy which is "capable of repetition, yet evading review." So. Pac. Terminal Co. v. ICC, 219 U.S. 498, 515 (1911). In this case the Court finds that it is entirely probable, if not inevitable, that the plaintiff, Joseph Stone, will be receiving General Assistance in the very near future. As his affidavit shows, he is in chronic ill health, has no prospects for employment during the winter months, and presently relies upon unemployment compensation as his sole source of income. Furthermore there is no indication that the State has any intention of abandoning its present policy of denying General Assistance recipients evidentiary hearings prior to the reduction, suspension or termination of benefits. Consequently, the factual situation which spawned the plaintiff's original claim is certainly capable of repetition within the meaning of So. Pac. Terminal Co. v. ICC, supra.

The second element of the Southern Pacific test is that the governmental policy or determination "evade review." In that case the court was concerned with the ICC's apparent ability to avoid the judicial review of some of its decisions by issuing orders of such short duration that they would expire before they could be reviewed. The same type of problem presents itself here, for even regular recipients of

General Assistance may be on the program for very short periods of time. For the purposes of this opinion, the Court conceives of regular General Assistance recipients as those who receive benefits three or more times per month. Consequently, many recipients might be on General Assistance only for a month or two and therefore would be unable to see their claims resolved if the Court required them actually to be receiving General Assistance benefits throughout the adjudication process.

The United States Supreme Court has recently reiterated its approval of the principles enunciated in Southern Pacific. See, e.g., Roe v. Wade, 410 U.S. 113 (1973) and Super Tire Engineering Co. v. McCorkle, 416 U.S. 115 (1974). In Roe v. Wade, the Court determined the merits of the plaintiff's challenge to a state's anti-abortion statute despite the fact that the record failed to disclose whether or not the plaintiff was pregnant at the time of the district court hearing and despite the fact that she was not pregnant at the time of the Supreme Court's review. Because "the normal 266-day human gestation period is so short that the pregnancy will come to term before the usual appellate process is complete," the Court acknowledged it was confronted with an exception to the principle that "an actual controversy must exist at stages of appellate or certiorari review, and not simply at the date the action is initiated." 410 U.S. at 125. Citing Southern Pacific, the Court concluded that "[p]regnancy provides a classic justification for a conclusion of nonmootness. It truly could be 'capable of repetition, yet evading review.'" Id. Similarly, in the Super Tire case, the Court determined that a suit in which the plaintiffs attacked the state's policy of paying welfare benefits to strikers did not become moot when the

terminated. The Court said that while "the case for an injunction dissolved with the subsequent settlement of the strike . . . the parties to the principal controversy . . . may still retain sufficient interests and injury to justify the award of declaratory relief." 416 U.S. at 121-22. The Court pointed out that the challenged governmental policy was fixed and definite and that most labor strikes are of relatively short duration. What is important, in the eyes of the court, is "the existence of an immediate and definite governmental action or policy that has adversely affected and continues to affect a present interest." Id. at 125-26. That test has been met in our case, as the plaintiff has shown that there is a continuing policy to deny Goldberg type evidentiary hearings prior to the adjustment of General Assistance benefits. This state policy undoubtedly affects the present interests of the plaintiff and others similarly situated, and consequently the Court is satisfied that the criteria established in Southern Pacific, as interpreted by the Supreme Court in Roe v. Wade and Super Tire, are met. By this opinion, however, the Court does not mean to weaken any of the general principles pertaining to the determination of mootness. The Court supports the general proposition that a plaintiff who is not a participant in a particular welfare or social security program should not be allowed to challenge the administrative procedures of such a program. Under the particular and unique facts of this case, however, in which it is almost certain that the plaintiff will soon return to General Assistance, and in which the receipt of General Assistance may be of such short duration that requiring a litigant to be a recipient at the time of hearing or trial

effectively would preclude the judicial examination of an on-going governmental policy, the Court finds that the plaintiff's claim is not moot.

II

Plaintiff's Motion for Class Action Determination

The plaintiff has moved to bring this case as a class action, with the class consisting of all continuing recipients of General Assistance, namely those who receive General Assistance three or more times per month and those "who rely regularly on General Assistance benefits to meet any of their regularly recurring basic needs as covered by the General Assistance program." It is apparent that the plaintiff's proposed class is really made up of two subclasses, those receiving General Assistance three or more times per month and those relying upon General Assistance to meet "regularly recurring basic needs." The Court finds it difficult to perceive the boundaries of the second subclass and feels that certification of such a class would violate the principle that "an essential prerequisite to maintaining a class action is the existence of a 'class' whose bounds are precisely drawn." Williams v. Page, 60 F.R.D. 29, 34 (N.D. Ill. 1973). See also Kruger v. European Health Spa. Inc., 56 F.R.D. 104 (E.D. Wis. 1972), Weiss v. Tenney Corp., 47 F.R.D. 283 (S.D.N.Y. 1969), and Dolgow v. Anderson, 43 F.R.D. 472 (E.D.N.Y. 1968). With respect to the first subclass, those receiving General Assistance three or more times per month, the Court feels that class certification is appropriate since, as explained in the Court's

disposition of the plaintiff's summary judgment motion, infra, this is the group of recipients to whom Goldberg's due process protection should extend. The only remaining issue in this 23(b)(2) class action is a determination of what the notice requirements are after Eisen v. Carlisle & Jacquelin, 42 U.S.L.W. 4804 (U.S. May 28, 1974), in which the Supreme Court held that the plaintiff had to provide notice to all class members in a 23(b)(3) class action. By its own terms, however, that decision was limited to 23(b)(3) class actions, and prior to that decision several courts had held that no notice was required in (b)(1) or (b)(2) class actions. See, e.g., Johnson v. Georgia Highway Express, Inc., 417 F.2d 1122, 1125 (5th Cir. 1969), and Lynch v. Household Finance Corp., 360 F. Supp. 720 (D. Conn. 1973). The situation in the Second Circuit is somewhat unclear, however, because of the dicta in Eisen v. Carlisle & Jacquelin, 391 F.2d 555, 564 Cir. 1968) (Eisen II). In that case the Court stated, "we hold that notice is required as a matter of due process in all representative actions, and 23(c)(2) merely requires a particularized form of notice in 23(b)(3) actions." Id. at 564-65. To the same effect is Schrader v. Selective Service Sys. Loc. Bd. No. 76 of Wis., 470 F.2d 73 (7th Cir.), cert. denied, 409 U.S. 1085 (1972) in which the court clearly rejected the view that "notice is not required, as a matter of due process, when the class action is maintained under Rule 23(b)(1) or 23(b)(2)." Id. at 75.

To further complicate matters, the Second Circuit itself cast doubt upon the scope of the Eisen dicta in the recent case of Kohn v. Royall, Koegel & Wells, 496 F.2d 1094 (2d Cir. 1974). The heart of this

case involved the question of the appealability of the district court's order granting class status to the action. Nevertheless in the discussion of the case, the court stated that the burden of "'notifying members of the class, determining who is in and who has opted out, calculating damages, and the like' . . . to a large extent, is limited to those class actions brought under subdivision (b) (3) of Rule 23 because it is only in those actions that the court is required to ensure that all members of the potential class are notified of the action's pendency so that they may be afforded the opportunity to opt out." Id. at 1099. And the Court said further that "in contrast to Eisen and Herbst / Herbst v. International Telephone and Telegraph, 495 F.2d 1308 (2d Cir. 1974) in which a substantial cost to both the defendant and the district court would arise from compliance with the notice requirement for Rule 23(b) (3) class actions, the instant suit, brought under Rule 23(b) (2), bears as we have noted, no such notice requirement." Id. at 1100.

Taken together, the two Second Circuit opinions seem to say that while some form of notice may be required in all class actions, the stringent notice requirements of 23(c) (2) apply only to 23(b) (3) class actions. In other words, notice conforming with due process standards is required in all class actions, while precise statutory notice is required only in 23(b) (3) actions. This was theory the three judge court in Lynch v. Household Finance Corporation, 360 F. Supp. 720 (D. Conn. 1973) espoused when it said "we read Eisen simply to say that notice is required in all class actions when due process so requires." Id. at 722 n.3. The court found "the interests of the absent parties were fairly insured

Even without any notice because there are no money damages, there is no factual issue to be resolved, counsel for the named parties adequately represent the interest of the classes, . . . and the legal constitutional issue is not complex in light of recent Supreme Court decisions." Id.

This kind of analysis is consistent with the provisions of the rule itself. By its terms, subdivision (c)(2) applies to class actions maintained under 23(b)(3). With respect to actions under 23(b)(2), however, "whether the court should require notice to be given to members of the class of its intention to make a determination, or of the order embodying it, is left to the court's discretion under subdivision (d)(2)." Advisory Committee's Note to Proposed Rule 23, 39 F.R.D. 98, 104.

Due process in the class action context is somewhat different from due process as applied in individual actions. The essence of the class action is that it is a representative action. The representative participates fully in the action on behalf of the unnamed members of the class, and it is through him that the class reaps the benefits or suffers the losses of the action. Thus a class action judgment is binding upon all members of the class even if they didn't have notice or otherwise participate in the action. See Note, Managing the Large Class Action: Eisen v. Carlisle & Jacquelin, 87 Harv. L. Rev. 426, 433-34 (1973).

The underlying reason for the difference in notice procedures has been described as follows:

In (b)(1) and (b)(2) actions the class is generally bound together "through pre-existing or continuing legal relationships," thus rendering the class more cohesive than in (b)(3) actions where the class is only "loosely associated by common questions of law or fact." Because

of this cohesion, the likelihood that one member can adequately represent the interests of absent members will be great, and the interest of absent members in pursuing their own actions correspondingly small. Note, supra, at 441.

An important aspect of the (b)(2) class action is that by definition it involves declaratory or injunctive relief as opposed to money damages. Thus any harm that would befall members of the class under the application of res judicata would be minimal. No life, liberty, or property stands to be lost by members of the class who do not have notice of this action. The class action mechanism and due process should not be viewed as opposing forces. Both are designed to protect or aid individuals in their attempts to achieve justice. Consequently, "It would be ironic were the rigors of due process, designed to protect the interests of a class, to deny effective relief to that class." Note, supra, at 440.

While a court may, in its discretion, order some kind of notice under 23(b)(2), that notice need not be as complete or pervasive as that contemplated by Fed. R. Civ. P. 23(c)(2) or the Supreme Court's opinion in Eisen. Consequently the Court holds that individual notice to all class members is not required in this 23(b)(2) class action. The Court further holds that the nature of this suit and the relief requested is such as not to require the giving of an alternative type of notice and consequently none is so ordered. This holding is consistent with two recent opinions of this Court. See Vermont Low Income Advocacy Council v. Davis, Civil Action File No. 74-49 (D. Vt. Nov. 1, 1974) and Davis v. Weinberger, Civil Action file No. 6667 (D. Vt. Nov. 19, 1974).

See also Lynch v. Household Finance Corp., 360 F. Supp. 720 (D. Conn. 1973).

III

Plaintiff's Motion for Summary Judgment

Based upon the pleadings, affidavits and the parties' stipulation to certain facts pursuant to this Court's order of May 13, 1974, the Court is convinced there is no significant dispute as to any other material facts, and the following factual situation is before us.^{1/}

Plaintiff Joseph Stone is a 50 year old resident of Vergennes, Vermont, who had been unemployed since December, 1972. In February, 1973, plaintiff applied for and received aid under the Vermont General Assistance Program in the amount of \$15.00 per week for room rent and \$23.00 per week for food and personal needs. Under Vermont's General Assistance Program, benefits are only disbursed on a weekly basis and a new application and determination of eligibility is required for each week that General Assistance payments are granted. Each week from February, 1973, up to and including April 4, 1973, plaintiff reapplied for and received General Assistance. From April 4 to May 14, 1973, plaintiff was hospitalized and as a result thereof, filed no weekly application and received no aid during that period.

On May 14, 1973, plaintiff applied for and received General Assistance payments in the same amount granted prior to the involuntary interruption. Plaintiff continued to make weekly applications for General Assistance and he received such aid without interruption each week from that time up to and including the week of October 29, 1973.

Upon each weekly application, the General Assistance caseworker in the Middlebury District Office of the Vermont Department of Social Welfare made separate and independent eligibility determinations regarding plaintiff's applications for General Assistance. Plaintiff reapplied for General Assistance on November 5, 1973, and the General Assistance caseworker, after reviewing the eligibility criteria, determined that plaintiff had not met the work-seeking requirements under the regulations and denied the application. In denying the application of November 5, 1973, the caseworker informed plaintiff that he had a right to a fair hearing if he wished to challenge the denial of benefits. Plaintiff made such a request but apparently no hearing was ever held since plaintiff re-applied the following week, was found to have met the eligibility requirements and was granted assistance. On November 13, 1973, a hearing was held in this Court on plaintiff's motion for a temporary restraining order which was granted on the stipulation of counsel dated December 4, 1973.

The plaintiff stopped drawing General Assistance in May, 1974, when he secured a temporary job. He is presently unemployed and receiving unemployment compensation.

During the month of November, 1973, a statewide General Assistance survey was conducted in order to determine certain characteristics of the General Assistance Program. This survey, based on 2100 applicants, revealed that 62 percent of the applicants applied only once during the one month period, 17 percent applied twice and 10 percent of the applicants applied three times. The remaining 11 percent of the

caseload filed four or more applications during the month.

Another study was conducted during March, 1974, at the Barre District Office. This study revealed that 39 percent of the recipients included in the survey received no General Assistance during the thirty day period preceding an application; 22 percent received General Assistance once during this thirty day time period; 12 percent received it three times and 2 percent five times. The parties stipulated that the two surveys, taken together, indicate that between 20 and 25 percent of the General Assistance caseload receives General Assistance three or more times per month. The results of the March, 1974, survey indicate that 73 percent of the caseload surveyed receive General Assistance two times or less during a given thirty day period while the November, 1973, study indicates that 79 percent of the caseload receive aid two times or less in a thirty day period.

The issue before us, based on these facts, is whether the due process clause of the fourteenth amendment to the United States Constitution requires that notice and a prior hearing be granted before weekly General Assistance payments are terminated. Prefatory to our review of the legal precedents governing this issue we shall review the salient elements of Vermont's General Assistance Program.

"General Assistance" presently is defined by 33 V.S.A. § 3001(3) as "financial aid to provide the necessities of life including food, clothing, shelter, fuel, electricity, medical care and other items as the commissioner may prescribe by regulation when a need is found to exist and the applicant is otherwise found eligible." Funded wholly by

state monies,^{2/} eligibility under the statute is met if an individual "is in need and unable to provide a subsistence for himself . . . or from a person legally responsible for his support." 33 V.S.A. § 3004. Under the statute, the Department of Social Welfare is charged with helping employable persons receiving General Assistance to find employment and "may carry on programs to employ them in productive work or services." 33 V.S.A. § 3050.

The statute is implemented by regulations promulgated by the Department of Social Welfare.^{3/} Taken as a whole, the regulations impart three significant characteristics to the General Assistance Program. First, emergency assistance for those with an immediate and proven need who do not qualify for other welfare programs is the fundamental attribute of the program. Second, assistance is provided on solely a weekly basis, thus requiring weekly reapplications for those who wish to extend General Assistance benefits beyond the initial application period. Third, the eligibility criteria contained in the Department's regulations must be met upon each application, regardless of whether it is the initial application or a successive application, and the merits of successive applications are considered without regard to prior applications or prior eligibility.

Plaintiff, characterizing the number of recipients who receive General Assistance on a regular basis as "significant," contends that recipients situated such as plaintiff should receive the type of notice and hearing required by Goldberg v. Kelly, 397 U.S. 254 (1970), before continuing General Assistance grants can be terminated. The defendant, proceeding on the premise that the program under challenge is a "one-shot"

emergency program, posits that there is no statutory entitlement to General Assistance in the sense that concept is used in Goldberg v. Kelly, supra, and thus, the due process safeguards mandated on the facts of that case do not apply here.

At the outset, we note that although General Assistance is not a federally-assisted program but rather is a completely state-funded system of relief, this fact affords no basis for a deviation from the principles of due process, since the fourteenth amendment requires the state to provide due process in its laws. See Monroe v. Pape, 365 U.S. 167, 171-72 (1961); Brooks v. Center Township, 485 F.2d 383,385 (7th Cir. 1973). Thus, the precepts announced in Goldberg and its successors are fully available for purposes of our analysis here. We perceive that under Goldberg, if an assistance program is ongoing in nature, its termination must be preceded by notice and a hearing conforming to the strictures of due process. As the Court indicated, welfare benefits which under the legislative and regulatory scheme were ongoing, "are a matter of statutory entitlement for persons qualified to receive them." 397 U.S. at 262. In the case before us, the statutory and regulatory program, considered by itself, clearly reveals that General Assistance is not an ongoing program in the sense used in Goldberg. Vermont's General Assistance Program, in its formulation and conception, is quite different from the system before the Court in Goldberg. Under the Vermont statutory and regulatory scheme, General Assistance lasts but one week, and subsequent applications are considered without regard to past applications or prior receipt or rejection of benefits. Were we to judge the plaintiff's due process

argument against this sterile background, we would be inclined to distinguish Goldberg and its progeny and deny plaintiff's motion for summary judgment without further analysis. As indicated in Board of Regents v. Roth, 408 U.S. 564 (1972):

The Fourteenth Amendment's procedural protection of property is a safeguard of the security of interests that a person has already acquired in specific benefits. Id. at 576. (emphasis added).

In Roth, supra, the court ruled that a contractual relationship which by its terms had no provision for renewal gave a college professor no entitlement to a hearing when the contract was not renewed.

By limiting our frame of reference solely to the statute and regulations before us, it appears that by virtue of the requirement of week to week applications with a fresh determination of eligibility, an applicant for General Assistance has no present interest in specific benefits and thus the "entitlement" necessary for due process safeguards does not attach. The mere expectancy of continued receipt of General Assistance, subjectively exercised by the applicant, is insufficient for due process safeguards to attach. Perry v. Sindermann, 408 U.S. 593, 603 (1972).

However, we need not focus solely and exclusively on the applicable statute and regulations to assess the application of the Goldberg rationale. Perry v. Sindermann, supra, posits that extrinsic circumstances and other relevant facts may support a legitimate claim of entitlement to a benefit sufficient to invoke the requirement of prior notice and hearing. These circumstances, however, must be grounded in objectivity and must be supported by more than a "unilateral expectation."

Board of Regents v. Roth, supra, at 577.

The essence of the case before us, as we perceive it, is not so much an initial applicant's right to a hearing upon the rejection of his first request for General Assistance but rather the right of a regular recipient who has enjoyed the de facto continuation of benefits to a hearing prior to the termination of those benefits. On the agreed upon facts relevant to this individual plaintiff, we are persuaded that the termination of his benefits should have been preceded by a Goldberg type hearing. Plaintiff received General Assistance continuously from February through April, 1973, at which time he was hospitalized and consequently did not apply for benefits again until May 14, 1973. Upon his application in May, he again began to receive benefits. From May 14, 1973 up to November 5, 1973, plaintiff continuously received General Assistance even though he was required to file weekly applications. As we understand the plaintiff's status, his position remained constant during this period and thus the policies and practices of the Department of Social Welfare in granting plaintiff continuing General Assistance demonstrate that this plaintiff had a legitimate entitlement to continued General Assistance benefits and thus any termination thereof, after this lengthy and constant grant of benefits should have been preceded by notice and a hearing of the type required in Goldberg v. Kelly, supra.

We do not hold that every applicant who is denied General Assistance has a sufficient entitlement to benefits to invoke the due process safeguards of notice and prior hearing. The statistical evidence presented to us persuades us that the overwhelming majority of General

Assistance recipients have no such entitlement. We do not rigidly fix the outermost line beyond which the due process hearing must attach but it would appear that, absent exigent circumstances, those individuals who comprise the 20 to 25 percent of the surveyed caseload receiving General Assistance three or more times in a thirty day period should be within the sphere protected by the due process clause of the fourteenth amendment. This group constitutes the plaintiff class in this action.

ORDER

In accordance with the foregoing opinion it is hereby ORDERED:

That defendant's motion to dismiss is denied and that the plaintiff's motion for class action certification is granted with respect to those receiving General Assistance three or more times per month. The plaintiff's motion for summary judgment is granted as the Court finds and declares the State's policy of denying evidentiary hearings to regular recipients of General Assistance, as defined in this opinion, to be unconstitutional.

Dated at Burlington in the District of Vermont, this 16th day of December, 1974.

District Judge

FOOTNOTES

1/ Although some discrepancy appears as to the actual dates on which plaintiff Stone received General Assistance payments the parties are in substantial agreement as to the factual sequence in this case and acknowledge that minor deviations with regard to the dates upon which payments were received do not affect the resolution of the primary issue presented to us by the motion for summary judgment.

2/ See e.g. Report on the General Assistance Study at 1.

3/ Report on the General Assistance study at 4.

DEFENDANT PHILBROOK'S MOTION FOR RELIEF FROM ORDER

The defendant moves the Court, pursuant to the provisions of Fed. R. Civ. P. 60(b)(4), as follows:

To vacate its Order dated December 16, 1974, on the grounds that such Order is void because the Court lacked jurisdiction over the subject matter of the action.

s/
DEAN B. PINELES
Assistant Attorney General
State Office Building
Montpelier, Vt. 05602
Attorney for Defendant

REGULATIONS

Part 1

Volume II
2100-2199

Eligibility and Payment

Proposed 12/1/74

2142. Review Decisions -cont.

2142.3 Food Stamps

A Food Stamp household, whose eligibility is found on review to continue, shall be recertified to purchase a specified monthly Food Coupon allotment, based on current household size, for a specified monthly cash purchase requirement, based on current household net monthly income. Coupon allotment and purchase requirement may remain "as is", or either or both elements may change.

Review decision shall be effective with the next regular issuance for which the case action can be processed, subject to any applicable advance notice requirement. The next eligibility review date shall be scheduled from this effective date of recertification in accord with review frequency criteria (see Continuing Eligibility - Review Frequency).

When normal delay in implementing a change in coupon allotment and/or purchase requirement, required by a sudden and unforeseen change in household circumstances, would cause undue hardship, the household may return unused authorization cards for replacement at the changed rate(s). In such instances, the effective date of the change shall correspond to the earliest quarter-monthly period covered by the returned authorization cards. The next eligibility review date shall be scheduled from this date in accord with review frequency criteria (see Continuing Eligibility - Review Frequency).

2142.4 General Assistance

General Assistance, a program to meet emergency needs, has no provision for ongoing assistance. Subsequent requests will be treated as new applications.

2600-2609 Eligibility Criteria

Except as specifically provided in section 2602 (Exceptions), General Assistance shall be granted for only those applicants who:

1. Have received during the 30 day period immediately prior to application net income computed pursuant to General Assistance regulations which is below the applicable ANFC payment level; except that, applicants for General Assistance who are determined to be age 65 or over, blind or disabled, according to SSI standards, and have income below the ANFC payment level shall be eligible to receive monthly the whole difference between their net income and said ANFC payment level for not more than six consecutive months commencing with the month of an approved application following said determination and shall be ineligible thereafter.
2. Have not been disqualified for ANFC or Medicaid benefits because of their refusal to comply with a program eligibility requirement.
3. Actively pursue all potential sources of income, such as: ANFC, Medicaid, Social Security benefits, Veterans' benefits, wages, unemployment or workmen's compensation, support, insurance, etc.
4. Have an emergency need.
5. Have exhausted all available income and resources.
6. Have complied with the employment requirements if applicable.

General Assistance shall be furnished with the understanding that when a recipient subsequently acquires benefits or resources in the amount of \$500.00 or more from an inheritance; cash prize; sale of property; retroactive lump sum Social Security, Supplemental Security Income, Veterans or Railroad Retirement payment; or in or out of court awards or settlements; he shall be required to make reimbursement for the amount of aid furnished during the previous two years.

REGULATIONS

Volume II

Part 6

2600-2699

General Assistance

(E) 12/1/74

2602. Exceptions

Eligibility criteria in section 2600 shall not be applied to any applicant who has exhausted all available income and resources and who has an emergency need.

1. Caused by the death of recipient or his legal dependent, a court-ordered eviction, or a natural disaster, such as flood, fire or hurricane; or
2. For medical care; or
3. If the applicant is applying for General Assistance for the first time since September 5, 1973; or
4. For heating fuel.

a. Eligibility:

- 1) If fuel is purchased for the sole purpose of heating, as indicated by separate billing, then the applicant must demonstrate that he has already spent in the 30 days immediately prior to the date of the application that amount shown on the table below:

Table I

| Household Size | | | | | |
|----------------|---------|---------|---------|---------|---------|
| 1 | 2 | 3 | 4 | 5 and 6 | 7 and 8 |
| \$34.00 | \$42.00 | \$46.00 | \$46.00 | \$51.00 | \$57.00 |

- 2) If fuel is used for purposes in addition to heat, and there is no separate billing for the heat portion, then the applicant must demonstrate that he has already spent in the 30 days prior to the date of the application that amount shown in the table below:

Table II

| Household Size | | | | | |
|-----------------------------|---------|---------|---------|---------|---------|
| 1 | 2 | 3 | 4 | 5 and 6 | 7 and 8 |
| \$35.00 46.00 | \$54.00 | \$62.00 | \$63.00 | \$73.00 | \$79.00 |

b. Payment:

Assuming the applicant has met the requirement of 4 a. 1) or 2) above, then payment shall be made as follows:

- 1) If the fuel (e.g., oil, coal, or bottled gas) is stored on the premises and there is less than a 72 hour supply on hand, payment shall be made pursuant to regulation 2613.3.
- 2) If fuel (e.g., electricity or piped-in gas supplied by a utility) is not stored on the premises then payment shall be made pursuant to regulation 2613.4, so long as the supplier of the fuel has notified the applicant in writing that within 72 hours from date of application the supplier will no longer provide fuel.

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2607. Employment - cont.

2607.1 Requirements

Any individual who is included in the application and is not exempted under 2607.2 shall:

1. Be present whenever possible at the time of each application.
2. Submit evidence of at least 20 hours of active effort to seek full and/or part-time employment during the seven days immediately preceding the date of application. One half-hour shall be deducted from the 20 hours for each hour of suitable employment during the seven days.

Individuals who meet two or more of the following qualifications are exempted from the 20 hour job seeking requirement but remain subject to all other employment requirements in this section:

- a. age 40 or over;
 - b. 8th grade education or less;
 - c. inability to read or write;
 - d. lives 10 or more miles from a town of 2500 or more and has no available transportation, and cannot reasonably be expected to relocate within 30 days;
 - e. has not for six consecutive months or more in the last 5 years been either employed by one employer or been a full-time student;
 - f. released within 6 months from a mental health institution or hospital unit;
 - g. participating in a state or federally funded drug or alcohol treatment program.
3. Not restrict his/her search for employment to his/her major field of experience or to limited types of occupations. He/she shall accept any suitable job referrals and/or offers within his/her ability. The applicant shall be required to substantiate why he/she cannot perform a particular job.
 4. Submit form 218-G as evidence of contact within the past 24 hours or previous workday with the Department of Employment Security office for the purpose of obtaining employment opportunity information.
 5. Not have refused within the 30 days prior to application to report to the local Department of Employment Security office if requested by either the Department of Employment Security or the Department of Social Welfare.

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2607. Employment - cont.

2607.1 Requirements - cont.

6. Not have refused within the 30 days prior to application to report for an employment interview for suitable employment when referred by the Department of Employment Security or the Department of Social Welfare.
7. Not have refused within the 30 days prior to application to accept a bona fide offer of full or part-time suitable employment.
8. Not have quit suitable employment in the 30 days prior to application.

Any individual not exempted by 2607.2 who fails to meet any one of the above requirements is ineligible for assistance. The needs of any remaining eligible individuals covered by the same application will be met through vendor authorizations. However, when vendor authorizations cannot be utilized, a check payable to the provider and the recipient may be issued. In these instances no pro-rata reduction will be made for housing payments.

2619 Basic MaintenanceVolume II
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7/1/74Groceries and Personal Needs

Groceries and personal needs include food and essential items for household and personal care, such as soap, paste and such items as are normally purchased at a grocery outlet. Because funding is insufficient the payment of 100% of the updated grocery and personal needs allowance established 10/1/68 and updated 73, payment is reduced by 20%, precomputed as shown below. The following basic standard shall be used. Strict directors and town service officers to determine the amount of aid to be given for groceries and personal needs (see also 2614. Room and Board-Restaurant Meals). Grocery and personal need allowances shall be issued, as needed from one to seven days. For applicant households not subject to the employment requirement, except those applicants who are exempt from the employment requirements because it is their first application, allowances may be issued for up to 14 days as needed. Do not issue an allowance for any period covered by a previous issuance except when a condition exists as stated in 2602, item #1.

Groceries & Personal Needs

| Min. Allow. 1 day only | 2 Days | 3 Days | 4 Days | 5 Days | 6 Days | 7 Days | 8 Days | 9 Days | 10 Days | 11 Days | 12 Days | 13 Days | 14 Days |
|---------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|------------|------------|------------|------------|------------|
| 3.00 | 3.00 | 4.50 | 6.00 | 7.50 | 9.00 | 10.50 | 12.00 | 13.50 | 15.00 | 16.50 | 18.00 | 19.50 | 21.00 |
| 5.00 | 5.00 | 7.50 | 10.00 | 12.50 | 15.00 | 17.50 | 20.00 | 22.50 | 25.00 | 27.50 | 30.00 | 32.50 | 35.00 |
| 6.00 | 7.00 | 10.50 | 14.00 | 17.50 | 21.00 | 24.50 | 28.00 | 31.50 | 35.00 | 38.50 | 42.00 | 45.50 | 49.00 |
| 7.00 | 8.00 | 12.00 | 16.00 | 20.00 | 24.00 | 28.00 | 32.00 | 36.00 | 40.00 | 44.00 | 48.00 | 52.00 | 56.00 |
| 7.00 | 10.00 | 15.00 | 20.00 | 25.00 | 30.00 | 35.00 | 40.00 | 45.00 | 50.00 | 55.00 | 60.00 | 65.00 | 70.00 |
| 8.00 | 11.00 | 16.50 | 22.00 | 27.50 | 33.00 | 38.50 | 44.00 | 49.50 | 55.00 | 60.50 | 66.00 | 71.50 | 77.00 |
| 9.00 | 13.00 | 19.50 | 26.00 | 32.50 | 39.00 | 45.50 | 52.00 | 58.50 | 65.00 | 71.50 | 78.00 | 84.50 | 91.00 |
| 10.00 | 15.00 | 22.50 | 30.00 | 37.50 | 45.00 | 52.50 | 60.00 | 67.50 | 75.00 | 82.50 | 90.00 | 97.50 | 105.00 |
| 10.00 | 16.00 | 24.00 | 32.00 | 40.00 | 48.00 | 56.00 | 64.00 | 72.00 | 80.00 | 88.00 | 96.00 | 104.00 | 112.00 |
| 10.00 | 18.00 | 27.00 | 36.00 | 45.00 | 54.00 | 63.00 | 72.00 | 81.00 | 90.00 | 99.00 | 108.00 | 117.00 | 126.00 |
| 1.00 | 2.00 | 3.00 | 4.00 | 5.00 | 6.00 | 7.00 | 8.00 | 9.00 | 10.00 | 11.00 | 12.00 | 13.00 | 14.00 |

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2612. Clothing

Purchase of essential items of clothing only shall be authorized by district directors for eligible recipients as paid on an individual basis, only when such items cannot be obtained through donations from individuals or community groups. Purchase is limited to the most serviceable and appropriate item available at the lowest cost.

2613. Housing

Housing includes accommodations, including necessary fuel and utilities to provide permanent or temporary shelter for eligible applicants. Applicants are required to furnish verification of housing expenses. Housing payments may be authorized in accordance to prescribed regulations only when housing cannot be obtained without cost to the applicant, e.g., supplied by relatives, friends or community groups.

2613.1 Permanent Housing

Permanent housing is defined as housing accommodations intended to provide shelter on a continuing basis.

When one or more individuals or families occupy a housing unit the General Assistance housing payment for one individual's (or family's) share cannot exceed his pro-rata share of the General Assistance housing payment maximum or his actual payment, whichever is less. The pro-rata share is computed by dividing the total number of individuals or families in the housing unit into the General Assistance housing payment maximum. When applicants have made or will make a housing payment from available income that payment shall be deducted from the applicant's allowable share. No payment shall be authorized if an amount equaling the General Assistance housing payment maximum has already been paid or will be paid from Public Assistance or General Assistance funds granted to another person residing in that same household.

Payment shall not be authorized for shelter for prescribed periods which have expired.

Payment may be authorized for the current rental period on or after the first day of the rental period.

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2613. Housing - cont.

2613.1 Permanent Housing - cont.

Payment maximums are the same as those in the ANFC Program. However, because funding is insufficient to provide payment of 100% of those maximums, payment in the General Assistance Program is limited to 87% of the ANFC shelter maximums precomputed as shown below.

| Payment Maximums | | |
|--|---------------------------------|------------------------------|
| Housing Type | Outside Chittenden County | Chittenden County Only |
| Home Ownership Unfurnished Rental (No eating & sleeping accommodations or no heat or utilities supplied) | \$89.00 Monthly | \$105.00 Monthly |
| Furnished Rental (Eating & sleeping accommodations owned & supplied by landlord; or heat or utilities supplied) | \$124.00 Monthly | \$124.00 Monthly |
| Room Rent (meals not supplied) | \$15.00 Weekly | \$15.00 Weekly |

A rented mobile home shall qualify as a furnished or unfurnished rental according to the criteria listed under housing type. A mortgaged or owned mobile home shall qualify as shown in home ownership. Lot rental is included in the payment maximums.

Amounts paid for temporary housing shall not be added into amounts paid for permanent housing to arrive at the above maximums. Room rent may be authorized for a period not to exceed one week, as paid up to the maximum of \$15.00 per week.

Deposits or security payments shall not be authorized.

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2613. Housing - cont.

2613.2 Temporary Housing

Temporary housing is intended to provide short term shelter for applicants who are without housing.

Authorization for temporary housing may be issued for periods of not more than 7 days. Payment may be authorized in an amount necessary to secure such housing.

Temporary housing authorizations shall be discontinued according to section 2607 or as soon as permanent housing is located.

Deposits or security payments of any type shall not be authorized.

Department staff and town service officers shall make all possible effort to assist in the location of permanent housing for the recipient(s) who is located in temporary housing. However, the recipient shall be informed that he is primarily responsible for locating permanent housing accommodations and that if he does not make active effort to locate permanent housing, or fails to accept a housing accommodation deemed suitable by the district director or the town service officer, continued General Assistance payment for temporary housing shall be denied.

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2613. Housing - cont.

2613.3 Fuel

Delivery of fuel shall be authorized only when there is immediate need (less than 72 hours supply on hand) and the applicant is unable to obtain it for himself through a normal cash or credit transaction.

The amount of fuel authorized at any one time shall be limited to a maximum of a normal one-week supply or the minimum amount the supplier will deliver under standard company policy. Consultation with the fuel supplier may be necessary on occasion to determine this amount, if the applicant is unable to give this information.

Fuel authorizations will most often be shown in quantities rather than dollar amounts; as paid cost of actual amount delivered up to the authorized quantity will be paid.

2613.4 Utilities

Utilities means electricity, gas and water.

Payments for services under the General Assistance program shall be for current needs only. As applied to utility services, the term "current" refers to the last month (30 day reading period) for which service was rendered and for which a bill has been submitted to the user. For example: If the utility company normally bills on a bi-monthly basis the company may choose to recompute the bill to factor out the current period or to accept one-half of the last bi-monthly bill. Whichever method is used shall be applied to all bills submitted by the company.

In cases where service has already been terminated payment may also be made for a reasonable reconnection charge if demanded by the company as its standard policy for all customers.

Deposits are only authorized when a family is opening a new account and service will not be granted under any other circumstances. A deposit and a current payment will not be made simultaneously. The amount of the deposit will be that required for all other customers of the company and will not exceed two-twelfths of the reasonable estimated charge for utility service for the ensuing twelve months. The service provider will be advised by the district director that the deposit will be credited to the Department of Social Welfare and will be refunded to the department with interest in accordance with the company's customary policy. Any deposit refunds made inadvertently to the recipient by the service provider will be the responsibility of the provider to collect and will not constitute settlement of the deposit obligation to the State through the department.

2613.5 Moving Expense

District directors and town service officers shall authorize payment of reasonable costs of moving household furniture to a new location provided the need to move said furniture is the direct result of a court-ordered eviction.

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2614. Room and Board - Restaurant Meals

Restaurant Meals and Room and Board allowance shall be authorized from one to seven days. For applicant households not subject to the employment requirements, except those applicants who are exempt from the employment requirements because it is their first application, allowances may be issued for up to 14 days as needed. A Restaurant Meals allowance shall not be authorized when an eligible recipient has cooking facilities available.

Restaurant AllowanceMaximum
(7 days)

| | | |
|--------------------------|---------------------------|--------------------|
| Single meal | \$1.00 per person per day | \$7.00 per person |
| Three meals (one day) | \$3.00 per person per day | \$21.00 per person |

Room & Board Allowance: \$20.00 per week per person.

When an eligible recipient receives a Restaurant Meals or a Room and Board allowance, he shall also receive the following personal needs allowance based on the number of General Assistance recipients included in the allowance:

| <u>No. of GA Recipients</u> | <u>PNI Per Week</u> |
|-----------------------------|---------------------|
| 1 | \$2.00 |
| 2 or more | \$3.00 maximum |

District directors may issue district payroll checks in lieu of vendor authorization.

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Program Administration

~~Proposed~~ 9/1/72

1252. Complaints

Complaints shall be handled by the persons to whom they are addressed. Such persons shall explain the reason for the act(s), decision(s), omission(s), or delay complained of. When necessary, he shall conduct further investigation or when the addressee is the district supervisor, he shall cause such further investigation. If the complainant is unsatisfied by the decision of the addressee, the addressee shall advise him of his right to request a fair hearing and to obtain legal representation either through a private attorney of his own choice and at his own expense or through referral to Legal Aid.

1253. Continued Assistance

Upon receipt of a request for fair hearing in response to notice of proposed termination or reduction of aid or benefits, the district director shall determine whether the issue raised is a question of fact or judgment or is a question of law or department policy.

Assistance or benefits shall continue until a fair hearing decision is rendered, if:

1. The request for fair hearing is received in the district office, or postmarked within the specified advance notice period; and
2. The question at issue has been ruled an issue of fact or judgment.

Assistance or benefits shall be discontinued or reduced immediately, although fair hearing response continues, when the request has been ruled an issue of law or department policy.

The district director shall inform the recipient in writing of action taken with regards to continuation of benefits, including the reason therefor, and response to the fair hearing request.